IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent*

On Review of Order of the Subversive Activities Control Board

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

EXCERPTS FROM PROCEEDINGS AFTER REMAND*

17151 BEFORE THE

SUBVERSIVE ACTIVITIES CONTROL BOARD

* * * * * * * * * * *

Request for Opportunity to be Heard, Etc.

The respondent, by its attorneys, makes the following requests:

1. If the Board intends to proceed by expunging the testimony of Crouch, Johnson and Matusow, without a hearing as to their lack of credibility, argument before the Board is requested so that counsel for respondent may have an opportunity to demonstrate that the evidence of record requires the Board to decide this case in favor of respondent and to dismiss the petition.

2. If the Board intends to hold a hearing as to whether the testimony of the three witnesses must be discredited, we request that ample advance notice of the hearing be given, thereby diminishing the possibility of conflict with other commitments of counsel and permitting counsel to obtain and have served the numerous subpoenas which will be required.

JOHN J. ABT,
John J. Abt,
JOSEPH FORER,
Joseph Forer,
Attorneys for Respondent.

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Memorandum Opinion and Order of the Board

This proceeding is presently before the Board pursuant to the decision of the Supreme Court of the United States entered on April 30, 1956, sub nom *Communist Party* v.

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*This Supplemental Joint Appendix is paginated to begin immediately following the last page of the printed record in the Supreme Court on the prior review.

Subversive Activities Control Board, (351 U.S. 115), which reversed and remanded this proceeding on the ground that the United States Court of Appeals for the District of Columbia Circuit, which had affirmed the Board's order* upon review on December 23, 1954, (223 F. 2d 531), had erroneously denied a motion for leave to adduce additional evidence concerning the credibility of witnesses Crouch, Johnson, and Matusow, filed by the Party in that Court on August 11, 1954. On May 2, 1956, the Board moved in the Supreme Court that its judgment be certified to the Court of Appeals forthwith, and the Party opposed on the grounds that it was considering filing a motion for rehearing or in the alternative for modification of the terms of remand. The Supreme Court, notwithstanding the Party's opposition, certified the judgment to the Court of Appeals on May 15, 1956, and that Court on May 16, 1956, issued its "Order Pursuant To The Judgment Of The Supreme Court," remanding the case to the Board "for proceedings in conformity with the opinion of the Supreme Court. See Section 14(a) of the Subversive Activities Control Act of 1950 . . ."

17238 On May 21, 1956, the Party filed three motions with the Board seeking by *Motion I* to reopen for additional evidence concerning matters assertedly occurring since the close of the hearing herein and the submission of the proceeding to the Supreme Court which would show that there has not been and is not now a world Communist movement of the character described in section 2 of the Act and that the Party has not been and is not now a Communist-action organization as defined in section 3(3) of the Act; by *Motion II* to strike the testimony of Attorney General's witnesses Gitlow, Budenz, Honig, and Scar-

*The petition herein was filed with the Board on November 22, 1950; the Board hearing commenced on April 23, 1951, and closed on July 1, 1952; the Recommended Decision of the Hearing Panel was issued on October 20, 1952; and the Board's Report and Order directing the Communist Party to register as a Communist-action organization was entered herein on April 20, 1953. The Party's petition to the Court of Appeals for review of this Order was filed on June 17, 1953.

letto as being tainted or in the alternative to reopen to receive additional evidence that Gitlow subsequent to the hearing herein testified falsely concerning Communist Party affiliation of certain individuals, and to reverse prior Board rulings denying the production of documents and reports made to the Federal Bureau of Investigation by Gitlow, Budenz, and Scarletto and to order such reports adduced which assertedly would show that they falsified in their Board testimony; and by *Motion III* to reopen for the introduction of evidence regarding the Attorney General's witness Markward consisting of (a) evidence heretofore proffered by the Party in a motion to reopen filed with the Board and denied prior to the case going up on appeal, (b) a report made by Markward to the Federal Bureau of Investigation, a request for which has been previously denied by the Board, and (c) evidence that assertedly would show that while this case was on appeal Markward testified falsely in a Department of Defense security hearing concerning Party membership of one Annie Lee Moss.

On the same date that the foregoing motions were lodged with the Board the Party moved in the Court of Appeals for an amendment and clarification of that Court's order of May 16th, seeking to have the Board's order directing it to register as a Communist-action organization expressly set aside "... in order to insure that further proceedings before the Board will conform to the judgment of the Supreme Court and that the Board will not erroneously deny petitioner an opportunity to introduce material evidence." The Party in that motion alluded to the three instant motions it had filed with the Board, expressed apprehension to the Court that these motions would be denied by the Board for lack of authority to consider them and representing that it desired clarification of the Court's order so it could protect its rights by filing a timely motion with the Court for leave to adduce additional evidence before the Board. In opposing that motion in the Court the Board contended that its order against the Party should

not be set aside as there was no warrant in the Supreme Court's opinion for doing so and it appended copies of the three motions that the Party had filed with the Board to acquaint the Court with the nature and scope of evidence the Party sought to have considered upon the remand. The Court denied the Party's motion per curiam without opinion on June 13, 1956.

17239 On June 20, 1956, the Attorney General filed with the Board a memorandum in opposition to the Party's instant motions contending that they should be denied *in toto*. These motions were argued before the full Board on July 12, 1956, and are disposed of by this Memorandum Opinion.

It is first desirable for an orderly consideration of these matters to state the procedure the Board intends to follow concerning the specific matter upon which the case was remanded. We are given clear alternatives by the Supreme Court of either reopening the hearing pursuant to section 14(a) of the Act to receive additional evidence concerning the credibility of the Attorney General's witnesses Crouch, Johnson, and Matusow, or of assuming the truth of the allegations made in the Party's affidavit which accompanied its motion for leave to adduce and expunging the testimony of the afore-mentioned witnesses without further hearing.

The Party's allegations concerning these witnesses in that supporting affidavit have never been controverted by the Attorney General. The witness Crouch is now dead and the witness Matusow has been, upon the basis of substantially the same evidence proffered by the Party's motion, totally discredited by the Board in other proceedings subsequent to the decision of the Court of Appeals herein and prior to the Supreme Court's opinion remanding this case.* Thus as to Crouch an effective hearing as to his

*See Board's Reports in *Brownell* v. *Labor Youth League*, Docket No. 102-53, dated February 15, 1955; *Brownell* v. *Veterans of the Abraham Lincoln Brigade*, Docket No. 108-53, dated December 21, 1955; and *Brownell* v. *National Council of American-Soviet Friendship, Inc.*, Docket No. 104-53, dated February 7, 1956.

credibility is thwarted at the outset by his death and as to Matusow it would avail nothing as the Board has previously ruled that his credibility was such that it should disregard his testimony *in toto*. Further, since neither party has indicated any desire to present evidence concerning the credibility of any of these witnesses in preference to having the Board expunge, and taking into account that the public interest favors proceeding to a final resolution of this case, we shall proceed upon remand with respect to the witnesses Crouch, Johnson, and Matusow, by expunging their testimony and reconsidering our determination on the record as expurgated.**

17240 We turn now to a consideration of the pending motions.

Motion I—To Reopen For Additional Evidence, and Offer of Proof

The Party in this motion and offer of proof as supplemented on June 29, 1956, contends that the Supreme Court decision sets aside the Board's order against the Communist Party and that the Board is required to make new findings and enter a new order; that section 13(a) of the Act requires this finding to be as of the present time; and that since the hearing herein closed on July 1, 1952, there is no evidence before the Board as to the Party's current character and hence no basis for a finding in the present tense. It was further contended at oral argument that even if the order was not set aside the Board may and should take the additional evidence which the Party alleges has become available to it since the termination of the hearing and submission of the case to the Supreme Court pertaining to Marxism-Leninism, the dissolution of the Communist Information Bureau (Cominform), and the

**The parties will be notified at a later date of Board action on the Communist Party's request, filed May 16, 1956, to argue the sufficiency of the evidence upon deletion of the testimony of Crouch, Johnson, and Matusow.

eight criteria of section 13(e) of the Act, which additional evidence assertedly would establish that the Party has not been and is not now a Communist-action organization.

As summarized in argument, the Party offers to prove by such evidence that "the Board's original determination that there was a world Communist movement of the kind described in section 2 of the Act and that Respondent was a Communist-action organization was wrong at the time it was made" and that "in any event no such world Communist movement exists as of now and the Respondent is not a Communist-action organization as of now." (Tr. 16841.)

In its memorandum in opposition to this motion, petitioner takes the positions: (1) the opinion of the Supreme Court and the ruling of the Court of Appeals denying the Party's motion to set the Board's order aside clearly establish that the order is not set aside and hence no new order need be entered as of the present time; (2) section 13(a) of the Act, construed in context, requires only a finding that a respondent "is" a Communist-action organization as of the time the petition was filed with the Board; (3) that Congress specifically included in section 13(b) a "release" clause whereby an organization may prove it no longer meets the standards of the Act and can be relieved of its duty to register and that such procedure is exclusive; (4) that an administrative process superimposed with judicial review necessarily takes time and that if changes in circumstances or trends during this period warranted reopening, the administrative process would stand little chance of ever being consummated, citing *I.C.C.* v. *Jersey City*, 322 U.S. 503, at page 514; *U.S.* v. *Pierce Auto*, 17241 327 U.S. 515; and *Consolidated Copperstate Lines* v. *U.S.*, 65 Fed. Supp. 950; (5) that the evidence sought to be adduced is sufficiently broad to amount to a trial *de novo* on issues which were fully explored at the hearing and concerning which respondent is now precluded

from offering evidence; (6) that the standards set forth in *Thompson* v. *U.S.*, 188 F. 2d 652, for a new trial are not met, namely, that due diligence must be shown by the Party and that the new evidence must be (a) discovered since the trial, (b) not merely cumulative or impeaching, (c) material to the issues, and (d) such as would probably change the result; and (7) that the motion is addressed to the discretion of the Board and should be denied *in toto*.

We are met at the threshold with the question of our authority at this posture of the case to entertain this motion. The Party in oral argument cited *Federal Communications Commission* v. *Pottsville Broadcasting Company*, 309 U.S. 134, as authority for the Board proceeding on remand to entertain this motion, and cases decided in conformity therewith* for the proposition that it would constitute an abuse of discretion not to hear the proffered evidence. Petitioner contends that *Pottsville* and other cases cited afford no support for this position as they turned on the peculiarities of the Federal Communications Act and the Commission's regulatory duty thereunder to award permits for the construction and operation of broadcasting facilities on the basis of public convenience, interest or necessity, which considerations are not present in the case at hand.

Underlying the *Pottsville* case are both the Constitutional division and the Congressional distribution of Governmental powers. In view of the nature of Board proceedings and the character of the Board's functions under the Act as set forth below, both being materially different from those of the Federal Communications Commission whose hearing powers are exercised in implementation of a flexible regulatory scheme pursuant to a broad Congressional policy, we do not view the Pottsville decision or those

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*Wayne Broadcasting v. F.C.C., 225 F. 2d 523; The Enterprise Co. v. F.C.C., 231 F. 2d 708; W. S. Butterfield Theatres, Inc. v. F.C.C., decided by U. S. Court of Appeals, District of Columbia Circuit, May 24, 1956.

cases decided in conformity therewith, such as *Easton Publishing Company, et al.* v. *Federal Communications Commission,* 185 F. 2d 987, as affording authority for us to . . entertain the instant motion.

17242 Concerning the nature of Board proceedings and its duties under the Act, it is pertinent that the Act was called into being by the inefficacy of previous Congressional enactments such as the Foreign Agents Registration Act, 22 U.S.A. § 611-21, and the Voorhis Act, 18 U.S.A. § 2386, in the face of increasing danger to the Government resulting from the activities and successes of the world Communist movement, to effectuate the registration and disclosure of Communist agents in the United States. This legislation was deemed necessary to the security of the Nation.

The intent of Congress as manifested by the terms of the Act is that each Communist-action or Communist-front organization in existence in this country on the effective date of the Act or coming into existence thereafter had a duty to register with the Attorney General as such; that the Attorney General has the right and is obligated to proceed before the Board when he has reason to believe an organization which has not registered is required to be registered. Board proceedings thus invoked are inherently adversary and are held to determine if this duty exists. If so, § 13(g) requires that a Board order directing registration issue; if not, § 13(h) requires an order dismissing the petition. Save those incident to the conduct of enlightened adversary hearings, the Board possesses no investigative powers. It has no broad regulatory domain involving wide areas of discretion committed to its administration by Congress and has no powers to enforce its own orders. Much akin to a district court, it loses jurisdiction over its proceedings once the record is filed in the Circuit Court pursuant to the statutory review procedures being invoked and its orders become final and are *res adjudicata* under

section 14(b) without implementing court action if judicial review is not instituted within the prescribed time or if affirmed upon appeal. Initial judicial review of Board proceedings is placed in a specified court, the United States Court of Appeals for the District of Columbia Circuit; and the scope of review is broader than that normally prevailing over administrative agencies.

The Board functions solely as a quasi-judicial agency, empowered upon petitions duly filed to conduct hearings, to arrive at findings of fact and conclusions of law on the basis of the record made in such hearings, and to issue orders requiring or cancelling registration or denying petitions accordingly.

Consequently, the Board's duties under the Act and the character of its proceedings are such that a wholesale transplantation of the *Pottsville* case rationale is not possible; indeed the many factors above discussed establish the contrary. In this connection compare *Evans* v. *Federal Communications Commission,* 113 F. 2d 166, p. 168, where the court indicates that the Pottsville rationale is not 17243 applicable to proceedings such as those of the Board, which are judicial in character. Therefore, in proceeding upon this remand the Board more properly assimilates its position to that of an inferior court rather than to that of an administrative agency vested with broad regulatory powers over a segment of the economy and whose hearing powers are exercised in implemention of such regulatory functions. This is not to say, however, that Board proceedings are not affected with a high degree of public interest or that the Board must not upon the instant remand exercise its powers in effectuation of the terms and purposes of the Act as prescribed by Congress. Quite to the contrary, Congress has entrusted to the Board an administrative process which involves the conduct of an adversary hearing wherein the Government is proceeding in vindication of perhaps the highest prerogative of sov-

ereignty, self-preservation, seeking by way of Board procedures to protect itself against unidentified efforts on behalf of foreign agencies devoted to its disestablishment.

The decision by the Supreme Court in *National Labor Relations Board* v. *Donnelly Garment, et al.*, 330 U.S. 219, is pertinent to the questions posed by the instant motion. In that case upon review of a Labor Board cease and desist order the Court of Appeals at the outset found error in the exclusion of evidence which amounted to a denial of due process in the hearing and it remanded the proceeding without reviewing the merits, directing that such evidence be taken. Upon remand the trial examiner received only the evidence specifically referred to by the court as erroneously excluded, plus that of the company president who had been ill and was unable to testify at the original hearing, otherwise he received no evidence that was available but not offered at the first hearing and excluded all evidence of events subsequent to the original hearing. The examiner and the Board, on the basis of the original record and the additional evidence made substantially the same findings and the Board entered substantially the same order. The case again went to the Court of Appeals which upon this review construed its previous opinion and mandate as calling for a new trial upon the evidence already taken and such competent and material evidence as might be proffered upon a further hearing. It again found a denial of due process resulting in part from the exclusion of evidence and without passing upon the merits again remanded to the Board. The Board took the case to the Supreme Court by certiorari. Insofar as pertinent here the Supreme Court citing the *Pottsville* case emphasized the difference in the relationship which prevails between courts *inter se* and between an appellate court and a law-enforcing agency like the Board whose proceedings are subject to unrestricted judicial review; while positing the

Circuit Court's first opinion remanding the case against the nature of the Board's process, the Court stated:

17244 "In the context of the opinion remanding the Board's original order *and of the nature of the administrative process with which it is entrusted,* the Board was justified in not deeming itself under duty to grant a "new trial" in the sense in which a lower court must start anew when an upper court directs such a new trial. There was no reference to a "new trial," nor was any intimation given that such was the breadth of what the remand required. *From the Court's opinion there appears only a very restricted dissatisfaction with the original proceedings before the Board, calling for a correspondingly restricted correction ...*"* (P. 227.) (Emphasis added.)

Discussing whether the Labor Board was required to reopen the issues in the case, the Court was clear that what had been left unassailed by the first Court Opinion need not be gone into on remand, stating:

> "Since in our view the remand did not call for a proceeding *de novo,* the Board was not required to reopen any issue as to which its ruling was left unassailed by the Circuit Court of Appeals in its first decision. We shall therefore consider the particular defects which the Circuit Court of Appeals found in the second hearing, by treating that hearing not as a new trial but as the sequel of the first hearing under a remand by the Circuit Court of Appeals for the limited purpose of correcting the prior erroneous exclusion of testimony." (P. 228.)

In the light of the foregoing, we turn to the case at hand. The opinion of the Supreme Court and the order of the Court of Appeals issued pursuant thereto remanding this proceeding have left the Board's order against the Party standing and contain not the slightest intimation that any additional evidence be taken other than that specified with

* This is also indicated in the Supreme Court's opinion remanding this proceeding, see fn., p. 9, *infra.*

espect to Crouch, Johnson, and Matusow. It is also clear
that the proceeding is remanded pursuant to section
7245 14(a) of the Act, with an alternative provided which
does not require any further hearings, the purpose
ing to permit the Board to reconsider its determination
a the present record as expurgated and to make its recom-
endation to the Court concerning its present order.

The Party here seeks to adduce evidence which cuts across
he entire gambit of issues in this proceeding embracing all
of the eight criteria of section 13(e) and all the elements of
the definition in section 3(3). In short, the motion in its
broadest aspect seeks a complete new trial on the record as
made and any other evidence relevant and material to any
issue in the case which it may adduce at a further hearing.
The *Donnelly* case is authority for ruling we need not re-
open to grant what in effect amounts to a new trial. Here
the Court of Appeals affirmed the Board's order and the
Supreme Court found a limited defect* resulting from the
exclusion of evidence and it went no further than to specify
a correspondingly limited means of correction, and it re-
manded "for proceedings in conformity with this opinion."
Beyond correction of this defect by expungement and re-
consideration on the record as expurgated we need not go,
especially where, as here, our duty under the Act, as we con-
ceive it, requires nothing more, and in fact militates against
reopening this proceeding on the basis invoked by the Party.

As the nature of the Board's function under this Act af-
fords no basis to act beyond the terms of the remanding
opinion, we are of the view that the reopening of the hear-
ing to take the proffered additional evidence is beyond our
authority in the premises.

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* In this connection, the Court stated: "Petitioner should therefore be given leave to make its allegations before the Board in a proceeding under § 14(a) of the Act. The issue on which the case must be returned to the Board lies within a narrow compass and the Board has ample scope of discretion in passing upon petitioner's motion." 351 U.S. 115, p. 125.

Notwithstanding the foregoing ruling, and taking cognizance that when such a conclusion is reached the merits of the matters presented are rarely discussed, the instant motion presents questions of initial impression under the Act and, in view of the Party's indications that it will pursue the matter in the Circuit Court of Appeals if it does not prevail here, and deeming that it may serve a useful purpose in the future course of this proceeding we will, alternatively, consider this motion on the merits and indicate a ruling thereon. For this purpose we shall assume that we have authority to do so.

17246 Turning now to the merits,* it is sound to say that matters of this type normally are addressed to the discretion of the agency, see *U.S.* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, and cases cited by the Attorney General, see pages 4-5, *supra*. Further, because administrative process superimposed with judicial review inevitably takes time, a motion to reopen a record made at a full and fair hearing after issuance of an order based thereon, because of events occurring after the close of the hearing, must be scrutinized with jealousy lest it open the door to abuse, see *I.C.C.* v. *Jersey City*, 322 U.S. 503; *N.L.R.B.* v. *New York Merchandise Co., Inc.*, 134 F. 2d 949; *Central and Southwest Utilities* v. *S. E. C.*, 136 F. 2d 273.

As stated, the Board's order herein against the Party has not been set aside and, as we interpretet sections 3 and 13 of the Act, there is no requirement that we bring the record up to date by taking evidence concerning events which have transpired since the close of the hearing herein. Consequently, the Board's order properly speaks on the record as made. Cf. *N.L.R.B.* v. *Westinghouse Air Brake Co.*, 120 F. 2d 1004, p. 1007, and *N.L.R.B.* v. *Acme Air Appliance Co.*, 117 F. 2d 417, p. 421. Therefore, con-

* Although not decisive, it should be noted that the Party's offer of proof and supporting affidavit of counsel are very general and conclusory and leave much to conjecture as to what evidence would be presented.

sidering the motion in its broadest aspect, we find that it should be denied.

If another view of the motion is taken, namely, that it in effect seeks not a new trial but to show new circumstances which have resulted in a change of the Party's status under the Act, then we are of the view that such evidence is not properly received at this posture of the case. It is not properly adducible in a section 14(a) proceeding, but rather is exclusively provided for in a separate proceeding under section 13(b) of the Act, as will be demonstrated.

As stated above, the Act, under these circumstances, does not require that the record speak as of the moment. Further, the Congressional objective, expressed in section 7 of the Act, that Communist organizations in the United States in existence on or after its effective date shall register could not be effectuated if Board procedures, which are in implementation of that purpose, can be reopened due to the circumstances occurring while the determination is under judicial review.

17247 This is shown by the interrelation of judicial review to finality of the Board's order. It is true that Board orders become final and enforceable and are *res adjudicata* if judicial review is not invoked in the allotted time under section 14(b); however, it is clear that, once the review procedure is instituted, enforceability of the order is stayed pending completion of review on the merits. In this aspect the matter is not unlike judicial enforcement of a cease and desist order of the National Labor Relations Board in unfair labor practice cases, the violation of which is punishable in a subsequent contempt proceeding. There the courts have recognized that evidence of compliance with such orders is irrelevant as a matter of law in a proceeding in the Appellate Court on review of the order and on a petition of the Board to

enforce its order, and that it cannot be adduced as newly discovered "material" evidence under a clause in the National Labor Relations Act (§ 10(e)) which is similar to the section 14(a) provision of this Act. See *N.L.R.B.* v. *Mexia Textile Mills, Inc.*, 339 U.S. 563.

The primary basis for this ruling is that to permit compliance evidence to be adduced in the judicial review proceeding which is necessary to the enforceability of the Board's order would "make a merry-go-round" of the Act (see *N.L.R.B.* v. *Condenser Corp.*, 128 F. 2d 67, p. 81), and "would serve only to delay the proceeding and would not contribute to the orderly administration of the Act." *N.L.R.B.* v. *Swift & Co.*, 129 F. 2d 222, p. 224.

The same considerations apply to change of status evidence after a Board order of registration has issued against a respondent. As this case shows, and it is generally representative of Board proceedings, it takes a number of years after the close of the hearing for appellate processes to be completed. Consequently, to permit the status of a respondent once litigated in a full hearing to be relitigated because of events transpiring while the case is undergoing the lengthy judicial review procedures would result in endless litigation which never comes to fruition. It would unduly delay the finality of the Board's order and frustrate the Congressional purpose, i.e., to inform the public concerning Communist organizations through registration of such organizations.

This is not mere speculation, but is precisely the situation with which we are confronted by the instant motion and which would result were it granted. For example, the basic nature of the Party's proffered new evidence stems from actions taken by the Communist Party of the Soviet Union and high Soviet officials and the reactions thereto by other Communist Parties throughout
17248 the world including respondent. As the Government noted in its opposition to this motion and as

our experience confirms, it has been characteristic of the Communist Party and government of the Soviet Union and the respondent to announce policies, for one reason or another, including political expediency, which seemingly reverse or materially alter existing major policies and programs. We have in our Report in this case traced a number of similar startling reversals of Soviet policies and the Party's adherence thereto for over a period of 30 years. Consequently, we do not consider the circumstances presented by this motion as comparable to the situation in *Atchison, Topeka & Santa Fe R. Co.* v. *U.S.*, 284 U.S. 248. Moreover, it is our considered opinion that circumstances such as those asserted can only be accurately assayed in the crucible of time.

Congress has specifically provided, in section 13(b) of the Act, for a Board hearing by which an organization may, after it has complied with a final registration order, show a change in status. This is made clear by section 13(i), which provides that if the Board finds that the registered organization is no longer a Communist organization, it must order the Attorney General to cancel the registration and relieve the organization from obligations thereunder. It is reasonable to conclude that these provisions of the Act reflect a Congressional intent that once a registration order has been issued by the Board against an organization, evidence that its determined status has changed should be considered only after registration has been effected and in a separate hearing directed to the effect of such new evidence upon the determined status. In the instant circumstances we deem the § 13(b) procedure exclusive, as any other course would preclude efficacious administration of the Act.

Accordingly, we would, assuming the authority to do so, deny this motion on the merits, for the reasons above stated.

Motion II—To Strike Testimony Or Reopen Hearing

We come now to Motion II, to strike the testimony of four witnesses, i.e., Gitlow, Budenz, Scarletto, and Honig, or alternatively (1) to reopen the hearing for production of documents previously denied with respect to Gitlow, Budenz, and Scarletto (for the most part documents in possession of the Federal Bureau of Investigation) and (2) reception of additional evidence on the credibility of witness Gitow.

The Attorney General opposes this motion, as well as Motion III, contending that the opinion of the Supreme Court does not justify or authorize the striking of 17249 the testimony of these witnesses, the reopening of the proceeding for the production of reports, or the hearing of additional evidence. It is asserted that these motions are untimely and attack matters already tested and adjudicated, that they contain matters irrelevant and immaterial to the issues, and are without legal justification.

In support of the motion to strike, the Party asserts that the testimony of the four witnesses herein was shown to be "tainted" within the purport of *Communist Party* v. *SACB*, supra, and that exclusionary rulings on cross-examination denying the production of documents prevented it from fully demonstrating the unreliability of these witnesses. In the motion's total aspect, with the exception of the request to present additional evidence on Gitlow's credibility, the Party is requesting the Board to reverse prior rulings.

While we agree with the Attorney General's contention that the remand herein does not require that we strike any testimony other than that of Crouch, Johnson, and Matusow under the expungement alternative, we believe it to be the spirit of the Supreme Court's opinion that we conduct the reconsideration of the determination with a view toward assuring that no "taint" exists, as

the Court applied that term. Accordingly, in the light of the Court's opinion we have reviewed the testimony of these four witnesses, taking into account the rulings referred to in support of this motion, and we find no reason to strike the testimony of these witnesses. We find, as indicated below, that the Party was given adequate opportunity, of which it fully availed itself, to attack the credibility of these witnesses. While their testimony involves evaluation problems, these are such that when resolved it is apparent that the witnesses are not "discredited," within the purport of the Supreme Court's opinion; and, hence, there is no warrant to strike their testimony. Moreover, the specific instances of asserted conflicts in testimony, which the Party now cites in support of its contention that the testimony of these witnesses should be stricken, were fully briefed by the Party in attacking the credibility of these witnesses both in the Court of Appeals and the Supreme Court; and the remand herein contains no intimation that these instances constituted "taint."

Turning to the first portion of the alternative request, to reopen for production of documents, the Party chose to attack on review in the Court of Appeals only two of the four rulings challenged here once again (see Party's brief in that court, page 197 and page 203 for these two). These two rulings were also raised in the Supreme Court (Party's brief page 204, fn. 130, and page 207, fn. 132).

It is significant that the Court of Appeals affirmed 17250 after an exhaustive review of the record, and, we note in passing, the Supreme Court with these questions before it remanded solely because of the lower court's denial of the motion for leave to adduce additional evidence on Crouch, Johnson, and Matusow. The Court of Appeals stated after reviewing the record: "Full opportunity for cross-examination of these witnesses was afforded at the hearing before the Board, and full opportunity was also afforded for the presentation of rebuttal

testimony." 223 F. 2d 531, 565, reversed on other grounds, 351 U.S. 115. We have, however, reviewed these rulings and, there being no supervening circumstances requiring otherwise, we see no reason to alter them.

We come now to the final question presented by this motion, to reopen to receive additional evidence on Gitlow's credibility. Here again, the Party, in the Court of Appeals (Party's brief, p. 206, fn. 18) and again in the Supreme Court (Party's brief, p. 201, fn. 129), briefed the substance of the assertions now made. An examination of the showing made by the Party in this motion, which is unsupported by an affidavit, reveals it does not approach that made in the motion (and supporting affidavit) which caused the remand in this proceeding. The instant showing is insufficient to warrant reopening and, moreover, to grant requests such as this would result in protracted trials within a trial on the credibility of witnesses. Clearly the law does not intend such a result.

Motion III—To Reopen For Evidence Re Witness Markward

We turn now to Motion III, which concerns the witness Markward and seeks to reopen the hearing (1) to permit proof of the allegations made by the Party in a prior motion before the Board to reopen the hearing filed on November 24, 1952, prior to issuance of the Report and Order herein, (2) to reverse a prior Board ruling and require the production of a report made to the Federal Bureau of Investigation by Markward concerning a statement by a Party official, and (3) to permit proof that Markward subsequently testified falsely concerning Party membership of one Annie Lee Moss on other occasions.

As to the first request, once again this is a matter referred to by the Party in its brief in the Court of Appeals (Party's brief, p. 214, fn. 24), although it did not choose to raise

squarely the denial of the motion to reopen. As to its failure to do so, it is significant that it could have
17251 and should have if it thought there was merit to its position. We have, however, reviewed the Board's prior ruling denying this motion in the light of the Supreme Court's opinion and reaffirm it.*

As to the second question, involving production of a document, this ruling was not specifically attacked in the Court of Appeals though accreditation of the testimony involved was challenged (Party's brief, p. 214, fn. 24). We allude once again to the conclusion of the Court of Appeals that the Party was given full opportunity for cross-examination and rebuttal and, upon reconsideration of the ruling, we conclude that it should be reaffirmed.

Coming to the request to adduce additional evidence concerning Markward's testimony on Annie Lee Moss, we have here a situation such as discussed above on the request to submit additional testimony regarding the credibility of Gitlow and, once again, an affidavit in support is lacking. The detailed counter-statements by counsel for the Attorney General are of such a nature as to throw grave doubt on the accuracy of the assertions and we conclude the proffered evidence would not have sufficient materiality to warrant reopening the hearing to receive it. Moreover, this matter was referred to by the Party in its brief in the Supreme Court (Party's brief, p. 201, fn. 129). For these reasons, as well as substantially those given above in relation to the submission of additional evidence on Gitlow, we decline to grant this request.

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*We note in passing that in other subsequent proceedings before it the Board has considered attacks on the credibility of Markward substantially on the basis here asserted and has concluded that these did not materially detract from the weight to be given to her testimony.

It may be worth the stating that in limited remands such as here involved, appellate courts do not intend to create an open sesame for the prevailing party. That is to say, there is no carte blanche to dredge the record for questions the prevailing party should have raised initially on review if they were thought to be meritorious; nor is there any implied right to rehash old rulings unlimitedly, particularly when such rulings have been presented on review and left unassailed. The party has no license to treat as a rehearsal the hearing on the issues. See *N.L.R.B.* v. *Donnelly Garment Co., supra,* at p. 228. If, however, the Board felt that supervening law, or some other valid reason pointed toward Board action in order to correct substantial injustice it would, of course, take appropriate measures. But we see no such situation here.

17252 For the reasons stated, we deem these three motions should be denied.

It is therefore

ORDERED that the motions be, and hereby are, each and severally denied in all respects.

By the Board.

THOMAS J. HERBERT,
Thomas J. Herbert,
Chairman.

Washington, D. C.
August 10, 1956

17256

Notice Fixing Date for Argument

The Communist Party having on May 16, 1956, requested, *inter alia,* that, if the Board intends to proceed by expunging the testimony of Crouch, Johnson and Matusow without a hearing, it be given an opportunity to show the evidence of record requires a decision in favor of the Communist Party and dismissal of the petition herein, and

the Board having announced in its Memorandum Opinion and Order issued August 10, 1956, that it intends to proceed in such manner, notice is hereby given that oral argument will be held at 10 A.M., EDT on September 10, 1956, in Room 113, Lafayette Building, 811 Vermont Avenue, Northwest, Washington, D. C., for the purpose of affording the Communist Party the opportunity requested, as set forth above. Two hours will be allotted to each party.

By direction of the Board.

August 16, 1956
Washington, D. C.

17271

Motion for Leave to Introduce Additional Evidence

The Respondent, by its attorneys, moves that the Board order the holding of a hearing to enable the Respondent to introduce evidence that government witness Mary Markward is a perjurer, whose testimony should be expunged from the record of this case.

In the alternative, the Respondent moves that the Board enter an order (1) requiring the Petitioner to supply for the inspection of Respondent's counsel the transcript of the hearing before the Security Hearing Board, Military District of Washington, in the case of Annie Lee Moss, convened at Fort Lesley J. McNair, Washington, on September 20 through 23, 1954, and the opinions and decisions of that Board and of the Secretary of Defense in the case, and (2) allowing time thereafter for the Respondent to file a motion before this Board with respect to the subject of perjury by Mrs. Markward regarding Annie Lee Moss.

In support of this motion, for the reasons and grounds therefor, and as an offer of what Respondent intends to prove in a hearing, Respondent refers to the attached affidavit of Joseph Forer.

17272 Oral argument hereon is requested.

17273 DISTRICT OF COLUMBIA, *ss:*

JOSEPH FORER, being duly sworn, deposes and says:

1. I am one of the attorneys for the respondent in the case before the Subversive Activities Control Board, No. 15-101, *Brownell* v. *The Communist Party of the United States of America.* This affidavit is made in support of, and as an offer of proof for, Respondent's Motion for Leave to Introduce Additional Evidence, to which this affidavit is annexed.

2. On information and belief derived from accounts in the public press: In or about September 1954, in a Security Board proceeding of the Department of Defense involving Mrs. Annie Lee Moss, a Department employee, Mary Markward gave testimony to the effect that Mrs. Moss had been a member of the Northeast Club of the Communist Party of the District of Columbia. Mrs. Moss contradicted this testimony. The Defense Department reinstated Mrs. Moss as an employee in or about January, 1955.

3. On October 18, 1955, Markward testified as a witness for the Attorney General in the proceeding before the Subversive Activities Control Board of *Brownell* v. *American Committee for Protection of the Foreign Born,* Board Docket No. 109-53. The transcript citations in this paragraph are to the transcript of the hearing in that case. Markward testified in that case that she joined the Communist Party in May 1943 (Tr. 3140) and was assigned to the Northeast Club or Branch of the Communist Party of the District of Columbia (Tr. 3141). The club then had a membership of about 40 persons (*ibid.*). In October 1943, Markward became press director of the club (*ibid.*). In January or February 1944, she became chairman of the club, and apparently remained so until May 1944 when, under the newly formed Communist Political Association, the neighborhood clubs were merged into a city-wide club

(Tr. 3148-9). Markward also testified as follows (Tr. 3171-2):

"Q. When you were a member of the Northeast Club, was Annie Lee Moss a member?

A. She was.

Q. When you referred to testifying in several loyalty board hearings, among other loyalty hearings 17274 you testified in the case of Annie Lee Moss, did you not?

A. I did.

Q. And, as a matter of fact, you were cross-examined in that case by Mr. George E. C. Hayes, who is now Chairman of the Public Utility Commission of the District of Columbia?

A. That is correct.

Q. You were also cross-examined by Mr. Hayes' law partner, Judge Cobb, correct?

A. Judge Cobb was there. I do not recall he asked any questions. He may have.

Q. Now you know, do you not, that Mrs. Annie Lee Moss is presently employed by the Department of Defense?

A. That is what I read in the papers."

4. It is well known that proceedings in government security board cases are considered confidential and that the transcripts of testimony and other documents in such cases are not made available to persons not in the government and not involved in the cases directly or as counsel. Following the order of the Court of Appeals of November 5, 1956, and in an effort to meet the Court's test of a "sufficient and appropriate showing," I telephoned Hon. James A. Cobb, who, with his law partner, had been counsel for Mrs. Moss in the Security Board hearing. I told Judge Cobb that I would like to see the transcript of the proceeding in Mrs. Moss' case if he was free to show it to me. He informed me that the Defense Department had delivered a copy of the transcript to his firm—I gathered for the purpose of Mrs. Moss' counsel checking its accuracy—but that the Department had taken it back, having sent a mes-

senger to Judge Cobb's office for that purpose. Judge Cobb, therefore, had no transcript of the proceeding. It is clear to me, therefore, that the Respondent herein can make no further showing other than that already made as to what transpired at the Security Board proceeding, unless Respondent has the aid of compulsory process. On information and belief, derived from the affidavit of James
17275 T. Devine, executed September 28, 1956, and filed by the Board in the Court of Appeals in support of its opposition to Respondent's motion to the Court for leave to adduce additional evidence, the Department of Justice has a copy of the proceedings in Mrs. Moss' Security Board case.

5. If the hearing requested herein is held, Respondent offers to prove the facts described in paragraphs 2 and 3, and in addition that Markward's testimony regarding Mrs. Moss was false, and that the Defense Department disbelieved Markward's testimony and therefore reinstated Mrs. Moss in her job. For this purpose Respondent will call as witnesses Mrs. Moss, Mrs. Markward, appropriate officials of the Defense Department and of the Security Board which heard Mrs. Moss' case; will also subpoena production of the proceedings in that case; and will call such further witnesses as may appear from such proceedings to be qualified to testify on the subject matter.

6. The aforesaid affidavit of James T. Devine makes certain assertions about the occurrences at Mrs. Moss' Security Board proceeding. In my view these assertions do not meet the situation involved, but on the contrary tend to give a misleading impression. The Devine affidavit asserts that Markward did not purport to identify Mrs. Moss in the Security Board proceeding on personal knowledge, but merely as one whose name she saw in records of the Communist Party and Communist Political Association. The affidavit quotes Markward as testifying, "That is the only recollection I can swear to." But: (1) Mrs. Markward swore to more than that in the American Committee for

Protection of Foreign Born case. (2) There is left unexplained how Markward could take such a position in view of her membership and positions in the Northeast Club. (3) The question still remains as to whether Markward was lying about seeing Mrs. Moss' name in the records. In view of Markward's testimony in the A.C.P.F.B. case, it seems obvious that Markward does not assert that the records of the Communist Party and Communist Political Association were or could be erroneous.

17276 Examination of Markward on the subject would, I believe, be illuminating, and I think it significant that the Devine affidavit is discreetly silent on the question of what testimony, if any, Markward gave about the accuracy of the records, how they were kept, etc. I believe, and the Respondent therefore offers to prove, that it could be established at a hearing that Markward lied when she testified in the Security Board proceeding that she saw Mrs. Moss' name in Communist Party records. (4) If the Devine affidavit is meant to imply that the Defense Department did not disbelieve Mrs. Markward, but assumed instead that the Communist Party records were referring to some other Annie Lee Moss than the one involved in the Security Board case, I believe, and the Respondent therefore offers to prove, that this implication is erroneous and without foundation. I point out in this connection that (a) the Devine affidavit shows that Markward was asked about an Annie Lee Moss "with an address at one times at 72 R Street," and (b) the implication is contradicted by Markward's testimony in the A.C.P.F.B. hearing. (5) The Devine affidavit seems to imply that the Defense Department believed Markward and accepted her testimony as establishing that Mrs. Moss had been a member of the Communist Party, but reinstated Mrs. Moss on the grounds that nevertheless Mrs. Moss was not presently subversive or disloyal. I believe, and the Respondent therefore offers to prove, that any such implication is untrue. Mrs. Moss, as I understand and as the Devine affidavit does not deny, testified under oath that she had

never been a member of the Communist Party. It is inconceivable that the Defense Department believed that Mrs. Moss' testimony in this respect was false and nevertheless reinstated her in employment.

7. After issuance of the Court's order of November 5, 1956, John Abt, my co-counsel, and I consulted as to what might be done to make the "sufficient and aprpopriate showing" referred to in that order. We knew that Markward had recently testified in the Blumberg Smith Act case in Philadelphia, but we did not know what she had testified to. In the hopes that her testimony in that case might be of assistance to us, we obtained a transcript of that testimony. The statements made in following paragraphs about events at the Blumberg trial are based on my examination of that transcript, being proceedings in *United States* v. *Dr. Albert Emanuel Blumberg*, United States District Court for the Eastern District of Pennsylvania, Cr. No. 17963, for the days of February 16, 17, 20-21, 1956. Transcript references are to that transcript. Preliminarily I should say that the charge against Dr. Blumberg was under the "membership" clause of the Smith Act, to the effect that he was a member of the Communist Party knowing that it advocated the overthrow of the United States government by force and violence.

17277

8. On direct examination on February 16, 1956, Markward testified in the Blumberg case that about June 10, 1945, she attended a meeting, at which Dr. Blumberg was present, of a District Committee of the Communist Political Association (Tr. 1116-7). This was the District Committee for the Maryland-District of Columbia area (Tr. 1091, 4), and, according to Markward, Dr. Blumberg was then vice-president of the District (Tr. 1123). Markward testified that Dr. Blumberg spoke at this meeting as follows (Tr. 1125-6, emphasis supplied):

"The Witness: Dr. Blumberg was self-critical also. He stated——

The Court: Was self-critical also? Self? You drop your voice now and then. Self-critical?

The Witness: That is right. He stated also that he was a long-time Communist Party member who happened to have the privilege of being educated in the Marxist-Leninist classics, and that he had had a high office in the District Communist Party organization, and that he shared the responsibility of allowing the Party members to follow the Browder line without taking the initiative and trying to inform them that this line was revision of the Marxist-Leninist line. He said that it was, in so dong that he had helped to disarm the Communist Party members in the district, in the nation, and that he—I am trying to get my phrase together here—*that the Communists had always known that it was inevitable that there be a violent struggle for the proletarian revolution;* that the Communist Party was the only organization which could be the vanguard and lead the people of this country to socialism; and that he took the responsibility, shared the responsibility for allowing the people
17278 to coast along for a couple of years there without bringing this to their constant attention."

9. On cross-examination, on February 20, 1956, Markward was asked to again state what Dr. Blumberg had said at this meeting. Her testimony was along the lines of that already quoted, but even more prejudicial to the defendant Blumberg. It was as follows (Tr. 1362m-1362n, emphasis supplied):

"Q. I am asking you what Dr. Blumberg said when he made certain remarks which you testified about the other day. The remarks started with him saying something about being self-critical.

A. Dr. Blumberg as a District Committee member, officer of the District Committee, made remarks to that District Committee meeting. He stated that he was making his remarks because he did feel critical of himself, he took responsibility as a district leader for having led and encouraged the members of the district to follow the line that Browder had laid down. He blamed himself because he said that he had had the training and experience in Marxism-Leninism and should have

been able to recognize the falsity and the non-validity of the line that the Party had taken in the recent past, and that he had done nothing to steer the membership away from it. He said that, as I recall it, in his lack of correct leadership he had aided in the disarming of the Party so that it was not able to take its vanguard role in leading the proletariat to the proletarian revolution, the dictatorship of the proletariat.

As I recall, he also stated that *it was vain or foolish for the Party leadership to have ever taken the point of view that this revolution could come about peacefully, that it would necessarily have to be brought about by force and violence since the capitalist leaders of the nation would not permit the revolution to come about peacefully.*"

10. Markward had previously been a government witness in Smith Act conspiracy trials in Baltimore (the *Frankfeld* case), involving alleged leaders of the Communist Party in Maryland and the District of Columbia, and in New York (the *Flynn* case), involving alleged national leaders of the Party. Her testimony about Blumberg's talk, quoted above, obviously would have been important in the *Flynn* and *Frankfeld* cases; any prosecutor in his senses would have welcomed such testimony; and unques-

17279 tionably the testimony would have been admitted under the conspiracy rules of evidence, particularly in view of the latitude with which such rules have been applied in Smith Act cases. I am personally familiar with the *Frankfeld* case, having briefed and argued the appeal in that case in the Fourth Circuit, and having prepared the petition for certiorari therein. Under the evidentiary rulings made by the trial judge in the *Frankfeld* case, it is inconceivable that Markward's testimony about Blumberg's talk would have been excluded.

11. In the Blumberg trial, Markward admitted that she had been interviewed by the United States Attorney or one of his assistants before she took the stand in the *Frankfeld* case (Tr. 1362). Nevertheless, it appears clear from the Blumberg transcript, she did not testify to any such talk

by Blumberg and did not even say that he attended the June 10, 1945 meeting. Her explanation was that she was not asked about Blumberg in that case. (Tr. 1362n-p). According to my recollection of Markward's testimony in the *Frankfeld* trial, she gave no testimony even remotely along the line quoted above as to Blumberg's alleged talk. I have been unable to actually check the *Frankfeld* trial record, which I no longer have in my possession, because the Board, in my opinion most arbitrarily, on November 13, 1956, entered an order giving respondent only until November 16, 1956, to file the motion to which this affidavit is attached. While I am quite sure that my recollection is accurate, I do not, of course, pretend to possess the superhuman powers of recollection which seem to be enjoyed by the Department of Justice's professional witnesses, including Markward.

12. Markward also admitted in the Blumberg trial that she had testified in the *Flynn* case about the June 10, 1945 meeting at which Dr. Blumberg allegedly spoke. She admitted that she was not asked in that trial about Dr. Blumberg. (Tr. 1362p). She was also asked and answered on cross-examination (*ibid.*):

17280 "Q. And in the whole Flynn trial, although you testified at length, you didn't mention violence once, did you?
A. I don't recall."

Again because of the Board's arbitrary time limit, I have been unable to check the record in the *Flynn* case to determine whether Markward did mention violence there.

13. In the hearing in this case Markward gave no testimony on the claimed talk by Blumberg. Yet obviously such testimony would have been welcomed by the attorneys for the Attorney General and would unquestionably have been admitted by the Board's hearing panel.

14. Markward testified at both the Blumberg and Flynn trials that she had submitted a report to the FBI on the

June 10, 1945 meeting referred to above (Blumberg trial Tr. 1362e). The court in the Blumberg case directed the government to produce this report, as well as certain others, "for inspection by the trial court to determine whether or not the documents have sufficient evidentiary value in any event to warrant disclosure to the defense" (Tr. 1293-4). Subsequently, the court, after examining the documents turned them over to Blumberg's attorney (R. 1364-7). Markward was shown and identified Exhibit E as her report to the FBI on the District Committee meeting of June 10, 1945, already referred to (R. 1372). She was then interrogated on further cross-examination and replied as follows with respect to Exhibit E (Tr. 1373):

> "Q. Now, kindly tell me, tell his Honor, show the jury, where, anywhere in those pages, double spaced, there appears a statement that either Dr. Blumberg or anyone else whatever said that violent struggle was inevitable in the United States of America, either in those words or in synonyms of any of those words, or any combination of words, or synonyms, for that matter.
>
> Mr. Von Moschzisker [Blumberg's attorney]: I know this takes time, your Honor, but I know of no other way to give her a chance.
>
> The Court: I know none other either. She will have to read it.
>
> 17281 By Mr. Von Moschzisker:
>
> Q. Can you show us where?
>
> A. This report does not contain the remarks in regard to force and violence other than the fact that we must fight and not appease reaction.
>
> Q. Who said that?
>
> A. Mr. Lannon."

15. Markward testified on direct in the Blumberg case that early in 1949 she attended a series of Communist Party classes on the ABC's of Marxism-Leninism, and that the teacher at one of these classes was Charles Payne (Tr. 1165-6). She testified as follows about Payne's teaching (Tr. 1176, emphasis supplied):

"The class which remains in my mind is one taught by Charles Payne. He told us that the Communist Party must necessarily bear the burden of taking the vanguard role in leading the people of America through a revolution. *He told us that this revolution could not be done peacefully; that the capitalist element in the country could not just hand over the reins to the Communists* but that the machinery of government would have to be seized by the dictatorship of the proletariat and then converted to the form of government which such a dictatorship would use.

"He said that after the dictatorship of the proletariat would be organized no other political party could be allowed in the United States, that any other political party would be an enemy of the people and would have to, by force, be suppressed."

16. The court required the government to produce the notes that Markward had taken at the class sessions and her report to the FBI on the Payne class. The court after examining them handed these over to Blumberg's counsel. (Tr. 1293-4, 1364-7). These documents (Exhibits L through O) showed that she had not noted and had not reported to the FBI that Payne had taught that the revolution could not be peacefully accomplished (Tr. 1374-9). After having been shown the exhibits she was asked and answered (Tr. 1387-8):

"Q. As a matter of fact, none of the exhibits I have shown you this afternoon mentioned either force or violence did they? You can look at them all if you want.

A. I believe that is right."

17282 17. Markward testified in the Board proceeding in this case as to the Payne class on the ABC's of Marxism-Leninism. Her testimony before the Board is obviously inconsistent with the testimony she gave in the Blumberg trial, quoted in paragraph 15 above. In this proceeding she described the Payne teaching as follows (printed Joint Appendix in the Court of Appeals p. 747):

"On February 25 [later corrected by her to March 25, J.A. 748], we had a class conducted by Charles Payne. 'The subject matter for that class was on 'Socialism, Utopian and Scientific.' There he stated that with the growth of imperialist nations, specifically speaking of the United States, that the world would be divided into two camps, that it would be the imperialist camp and that of the democracies moving towards socialism and these democracies moving towards socialism would be bound to be triumphant in the future."

18. The Respondent offers to prove the matters asserted in foregoing paragraphs 8 through 16; and that Markward committed perjury in the Blumberg trial in her testimony regarding the District Committee meeting of June 10, 1945 and regarding the Payne class.

19. The matter which Respondent has offered to prove in the foregoing was not available to Respondent prior to the decision of the Court of Appeals which affirmed the Board's registration order against Respondent.

20. The offer to show prejury committed by Mrs. Markward in the Blumberg case is relevant not only as another instance of perjury by her, but also to illuminate the probability of her having committed perjury with reference to Annie Lee Moss and to indicate the need for a hearing on Markward. Markward's testimony in the Blumberg case fits into the pattern of a practiced professional perjurer. The pattern goes like this: The witness gives testimony which neatly fits in with and supports the charge in the particular case. This testimony reveals a super-human memory as to conversations which took place years before. Simultaneously the memory is faulty as to much more recent matters, including the witness' own testimony 17283 in prior cases. On prior occasions in which the witness has testified and such testimony would have been important, the witness has either not testified at all on the subject or has given a different version, tailored to fit the particular previous case. When finally an objective

check is made possible by a court's requiring of contemporaneous reports to the FBI, it turns out that the reports do not contain, and contradict, the witness' testimony.

21. Nor can these matters be taken in isolation. As to Markward, we have already shown that she gave untrue testimony about her compensation from the FBI, and the Board has prevented us from proving in a hearing that she committed perjury on this subject. Moreover, the Department of Justice has used other perjurers in this case. This is true not only as to Matusow, Johnson and Crouch. We submit that the record demonstrates under any objective and intelligent analysis that numerous others of the government's witnesses are highly unreliable and untruthful witnesses. Without charging the Department of Justice with knowledge of subsequent events, it is clear that the Department did not in this case, to put the matter mildly, comply with its responsibility not to utilize witnesses of dubious credibility. To give only a few examples: It put Manning Johnson on the stand even though it knew that he had already admitted committing prejury as a government witness and had expressed a willingness to do so again. It put Honig on the stand even though it knew that he had been found an unreliable witness by Judge Sears in the first Bridges deportation case. It used Matusow even though it knew, as the Assistant Attorney General testified before an Appropriations Subcommittee, that he was a psychoneurotic (see our Supreme Court Brief, p. 200). Under the circumstances, one is entitled to believe that there is something more here than coincidence. How many perjured and unreliable witnesses have to be discovered in a single proceeding before one may fairly conclude that there is something wrong about the whole case?

17284 In the face of all these circumstances, the Board has persistently ignored and even concealed the circumstances revealing the unreliability of the Attorney General's witnesses. It has enthusiastically accepted the pal-

pably false testimony of palpably unreliable witnesses. It has refused to hold hearings on the unreliability of witnesses, and it has in the courts resisted such hearings. It has refused to require the production of witnesses' FBI reports (including production of a report by Markward), and thereby has precluded objective demonstration of false testimony. The Board, in short, has compromised the administration of justice.

JOSEPH FORER.
Joseph Forer.

Subscribed and sworn to before me this 15th day of November, 1956.

E. ELEANOR ROSCOE,
Notary Public.

17306 UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

November 26, 1956

Subversive Activities Control Board
811 Vermont Avenue, N.W.
Washington, D. C.

* * * * * * * * * * *

Dear Sirs:

We are attaching a transcript of the proceedings and a duplicate original of the Hearing Board action in the Annie Lee Moss employee security case in the Department of Defense. These documents are submitted to the Board in separate covers under seal for its *in camera* inspection in the event that the Board should determine that either or both of them is necessary to its deliberations.

As stated in our memorandum of this date in opposition to Respondent's Motion for Leave to Introduce Additional Evidence, it is our opinion that we are under no obligation in this matter to make these documents available at this time. We are submitting these documents in these

particular circumstances to expedite consideration of this important case in the event the Board determines it is necessary to review either or both of them. If the Board inspects *in camera* either or both of these documents, it is requested that such document or documents be retained under seal as part of the record in this case for such review by the appellate courts as may be required.

As the Board knows, the reports, records and files related to employee security proceedings are regarded as confidential. This policy is necessary in the interest of our national security and welfare and also to protect government personnel involved in such procedings. Neither this Department nor the Department of Defense can authorize public disclosure of this material without appropriate approval under the applicable executive orders, regulations and directives. In this connection your attention is called to the Presidential directive of March 13, 1948 and to the Presidential letter to the Secretary of Defense dated May 17, 1954. We are specifically instructed by the Department of Defense to state that the Hearing Board action be made available only to the members of the Board.

Respectfully,

JAMES T. DEVINE,
James T. Devine,
Attorney,
Department of Justice.

17313

Memorandum Opinion and Order

On November 16, 1956, respondent filed a motion for leave to introduce additional evidence, with an accompanying affidavit,[1] and petitioner on November 26, 1956, filed a memorandum in opposition thereto. Petitioner accompanied the memorandum in opposition with a sealed, certified

[1] Affiant mingles factual assertions and argument, making it difficult, unnecessarily, to weed out the portion properly in the affidavit.

copy of the transcript of proceedings in the Annie Lee Moss Security Hearing in the Defense Department, and the Security Board's findings,[2] for *in camera* inspection by the Board if it deemed such inspection necessary to its deliberation on the motion.

In its motion, respondent seeks to introduce evidence that witness Markward "is a perjurer, whose testimony should be expunged from the record of this case." In the alternative, respondent moves for an order (1) requiring production for inspection the transcript of the hearing in the Annie Lee Moss Security Hearings and the opinions and decisions of the Hearing Board and Secretary of Defense and (2) allowing time after inspection to file a motion "with respect to the subject of perjury by Mrs. Markward regarding Annie Lee Moss." Respondent requests oral argument on the motion but since the subject matter of the motion has previously become familiar to the Board it sees no need for oral argument.

17314 To avoid confusion in setting forth the assertions in the affidavit (see fn. 1), we relate them summarily. Affiant avers that witness Markward testified in the *Moss* hearing that Moss had been a member of the Northeast Club of the Communist Party in Washington, D. C.; that Moss contradicted this testimony; and that the Defense Department reinstated Moss. He avers further that in a proceeding before this Board, *Attorney General* v. *American Committee for Protection of Foreign Born*, Markward testified "to more" regarding Moss than that averred in the affidavit of Mr. Devine, attorney for petitioner, which related to the *Moss* Security Hearing and accompanied the Board's opposition to a similar motion previously filed by respondent on August 17, 1956, in the United States Court of Appeals for the District of Columbia in this proceeding.[3]

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[2] The decision of the Secretary of Defense in the proceeding, i.e., his public letter of January 18, 1955, is quoted in part in petitioner's memorandum.

[3] Respondent, in support, quotes testimony of Mrs. Markward regarding Mrs. Moss in the *Foreign Born* proceeding, *supra*.

Affiant avers, with various arguments in support, that Markward's testimony in the *Moss* hearing was false; and that the Defense Department disbelieved Markward and therefore reinstated Moss. To prove this, says affiant, he will subpoena Mrs. Moss, Mrs. Markward, appropriate Defense Department officials, Security Board members, the transcript of the Moss proceeding and such other witnesses as may be indicated.

In short, respondent apparently seeks to virtually retry before this Board the Moss Security Hearing and probe the actions and mental processes of Defense Department officials and Security Board members to show Markward lied in that proceeding.

It is further asserted that in *United States* v. *Blumberg*, U.S.D.C. E.D. Pa., Cr. No. 17963, a Smith Act trial under the "membership" clause, Markward testified that Blumberg had made certain statements to a Party meeting in 1945; that her report to the FBI on that meeting was produced and did not contain certain of the statements testified to; that in two conspiracy Smith Act trials where she was a witness (*United States* v. *Flynn, et al.* and *United States* v. *Frankfeld, et al.*) and in this proceeding she did not testify to the foregoing Blumberg statements and was not questioned concerning them; that under conspiracy rules of evidence, and under the rationale of the trial judge's rulings in one of the two Smith Act trials,[4] such testimony would, in affiant's opinion, have been admissible against the defendants in those other cases; that Mrs. Markward also testified in the *Blumberg* trial to certain statements by one Charles Payne while teaching a
17315 Communist Party class in Marxism-Leninism; that her notes in that class session and her written report to the FBI on the class were produced in court and did not contain the statement by Payne testified to; and that her testimony in this proceeding on the same class differed from her testimony thereon in the *Blumberg* case.

[4] Blumberg was not a defendant in either of these two Smith Act trials.

Respondent offers to show Markward committed perjury in the *Blumberg* trial in her testimony regarding the 1945 Party meeting and the Payne class. It contends, also, this offer of proof is relevant to its showing on Markward's testimony in the *Moss* hearing.

Petitioner contends there is no adequate showing that (1) Markward testified falsely in the *Moss* hearing (2) that the Defense Department discredited her or (3) that she testified in the *Foreign Born* proceeding inconsistently with her testimony in the *Moss* hearing. In offering the sealed transcript of the *Moss* proceeding for examination by the Board *in camera*, petitioner states that neither the Department of Justice nor the Defense Department can authorize public disclosure of the material without approval under "the Presidential directive of March 13, 1948" and "the Presidential letter to the Secretary of Defense dated May 17, 1954." In respect to the Markward testimony in the *Blumberg* case, petitioner, while not controverting so much of the affidavit as contains factual averments of the testimony there, argues that the showing of respondent alternately consists of speculation, allegations of perjury by omission and rests "* * * upon the fact that the witness' testimony was not a verbatim recital limited to the information contained in her reports to the Federal Bureau of Investigation." As to the latter, petitioner contends in substance that the reports of Markward to the FBI were in the nature of intelligence reports and "* * * their language was not to constitute a verbatim report of all events, statements and information to which [she] was privy, and further * * * they were not predicated upon criteria not yet established"; that Smith Act prosecutions did not commence until 1948 and the instant Act was not passed until 1950 and that it would be a needless function for an expert informant in a report to the FBI to burden it with a detailed statement of what a Party member said "in advocating such mutually understood terms as dictatorship of the proletariat, scientific socialism, proletarian

revolution, and other terms within the lexicon of Communism."

We have reviewed the documents in the *Moss* proceeding submitted by petitioner for inclusion in the record and *in camera* inspection by the Board. The review evidences, in the light of its motion, that respondent seeks to retry the *Moss* Security Hearing and probe the actions and mental processes of the Security Board and the Defense Department, and this is not a function of the Board. But even if this were permissible, our review reveals that respondent's showing that witness Markward testified falsely in the *Moss* proceeding and was disbelieved in that proceeding is not supported. The Board will, therefore,
17316 not permit testimony to be adduced going to the question of whether witness Markward was disbelieved in the *Moss* Security Hearing.

The Board will, however, without entering upon a rehearing of the *Moss* proceeding, reopen this hearing for the purpose of permitting respondent to attempt to show that witness Markward has testified inconsistently in statements made regarding Mrs. Moss' membership in the Communist Party, i. e., it may examine her on her testimony in the *Moss* hearing and the *Foreign Born* proceeding, *supra*, regarding Mrs. Moss to determine whether there have been any inconsistences in such testimony. If as a result of such examination respondent lays an adequate foundation the Board will entertain a request that petitioner be directed to attempt to secure appropriate approval for the production of witness Markward's testimony in the *Moss* Security Hearing for inspection and use by respondent in further examination of Mrs. Markward.

Coming to the showing on the Markward testimony in the *Blumberg* case, as well as the relation of a portion of that testimony to Markward testimony in this proceeding, we note the recitation of the testimony is not controverted by petitioner. In other words, in those instances in the *Blumberg* case where production of Markward's notes and

reports to the FBI were produced it is factually conceded by petitioner that those documents did not contain the statements testified to by Markward at the trial. We will weight that consideration, as well as petitioner's argument in reference thereto, in evaluating Mrs. Markward's testimony in this proceeding. In so doing, however, we will not consider as valid the inferences drawn by respondent in relation to the *Frankfeld* and *Flynn* cases. No witness rationally could be held to have such a burden. Nor do we consider it material or relevant that in this proceeding in testifying about the Payne class she related only so much of Mr. Payne's statements as pertained to the Marxist-Leninist version of the division of the world into two camps. It could well have been that petitioner's attorney did not desire testimony beyond that given by the witness in relation to the Payne class. Moreover, the fundamental issues being different in the two proceedings, we do not regard respondent's showing as sufficient to indicate testimonial inconsistency.

It is, therefore,

ORDERED that to the extent delimited above respondent's motion is hereby granted and the hearing in this proceeding is reopened for the purpose specified; and it is further

ORDERED that the hearing will commence at 10:00 A.M., December 7, 1956, in Room 113, Lafayette Building, 811 Vermont Avenue, Northwest, Washington, D. C.; and it is further

17317 ORDERED that petitioner produce the witness Markward for further examination, as indicated; and it is further

ORDERED that, in view of the foregoing Board action in reopening the hearing and the considerations leading to this, petitioner produce for Board inspection *in camera* on or before December 6, 1956, the report made to the FBI by witness Markward, referred to at pages 5983-5998 of the transcript of this proceeding, relating to the so-called "Frankfeld meeting"; further Board action to await the result of its inspection; and it is further

ORDERED that petitioner submit a certified copy of the January 18, 1955 public letter of the Secretary of Defense relating to the *Moss* proceeding; and it is further

ORDERED that respondent submit a certified copy of the pertinent testimony of witness Markward in the *Blumberg* case, to which it refers; and it is further

ORDERED that the paragraph on page 12 of the affidavit accompanying the instant motion is stricken as scurrilous, and the affiant, Joseph Forer, a member of the Bar of the United States Court of Appeals for the District of Columbia Circuit and a practitioner before this Board, is hereby notified that his conduct in this connection is considered unbecoming a member of the Bar practicing before the Board.[5]

By direction of the Board.

THOMAS J. HERBERT,
Thomas J. Herbert,
Chairman.

December 3, 1956
Washington, D. C.

17324

Motion to Amend Memorandum Opinion and Order of the Board of December 3, 1956

The respondent, by its attorneys, moves the Board to amend its Memorandum Opinion and Order of December 3, 1956 in the following respects:

1. By ordering petitioner to make available to respondent for its inspection and use in examining the witness Markward the transcript of the Annie Lee Moss Security Hearing or, in the alternative, so much of that transcript as contains the testimony of Markward.

2. By making available to respondent Markward's report to the F.B.I. concerning the so-called "Frankfeld meeting."

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[5] Mr. Forer will take note that should there be a repetition of such conduct the Board will consider instituting appropriate proceedings.

3. By enlarging the scope of respondent's examination of Markward to permit respondent to examine her with respect to the following matters:

A. The falsity of her identification, in the Security hearing, of Mrs. Moss as a member or former member of the Communist Party.

B. The discrepancies between (1) her testimony in the *Blumberg* case with reference to statements made by Charles Payne in a 1949 Communist Party class, (2) her notes and report to the F.B.I. concerning the same class, and (3) her testimony in this proceeding concerning that class.

C. The discrepancies between her testimony in the *Blumberg* case with reference to the June 10, 1945 Com-
17325 munist Party meeting and her F.B.I. report concerning that meeting.

D. The omission from the testimony given by her in the *Flynn* and *Frankfeld* cases with reference to the June 10, 1945 Communist Party meeting of the statements concerning force and violations which she attributed to Blumberg when she testified in the *Blumberg* case.

E. The contradictions or inconsistencies, if any, between her testimony in this proceeding concerning the so-called "Frankfeld" meeting and her report to the F.B.I. on that meeting.

The grounds for the foregoing motion are as follows:

1. *The transcript of the Annie Lee Moss Security Hearing.* The Board has re-opened the hearing to permit respondent to examine Markward as to inconsistencies between her testimony regarding Mrs. Moss in the Security Hearing and in the *American Committee for the Protection of the Foreign Born* proceeding. Obviously, the best if not the only available evidence of such inconsistencies is contained in the transcripts of Markward's testimony in the two proceedings. Respondent cannot adequately examine Markward as to inconsistencies between her *Foreign Born*

and *Security Board* testimony if it is denied access to the latter testimony. Yet the order of the Board withholds from respondent the transcript of Markward's testimony in the Security Hearing, at least until the respondent succeeds in establishing, solely by the testimony of the witness whose credibility is under attack, that such inconsistencies exist.

The Board states that it has examined the transcript of the Security Hearing *in camera* and has found that it does not support "respondent's showing that witness Markward testified falsely in the Moss proceeding." The Board does not state that its examination of the transcript revealed no inconsistency between Markward's testimony in the Security Hearing and her testimony in the *Foreign Born* proceeding. On the contrary, since the Board
17326 has permitted respondent to examine Markward for the purpose of establishing such an inconsistency, it is fair to assume that the inconsistency exists. Otherwise the Board would presumably have denied a hearing on the issue of inconsistency just as it did on the issue of falsity, and for the same reason. But if Markward's *Security Hearing* testimony is inconsistent with her *Foreign Born* testimony, respondent is plainly entitled to inspect the former, use it in examining Markward, and introduce it in evidence.

The only conceivable reason for withholding the Security Board transcript from respondent is its alleged privileged character. But petitioner waived the right to assert any such privilege when his counsel, James T. Devine, made a partial disclosure of the contents of the transcript in an affidavit annexed to the Board's Memorandum in Opposition to Motion for Leave to Adduce Additional Evidence dated September 28, 1956 and filed with the Court of Appeals. Certainly the Attorney General cannot make public so much of the contents of an alleged privileged document as he believes supports his position and then assert the privilege as a bar to the production of portions

of the same document bearing on the same subject matter which are or may be unfavorable to him.

If nevertheless, petitioner is unable or unwilling to produce for respondent's inspection the *Security Hearing* transcript, then the appropriate course is for the Board to strike from the record in this case all of Markward's testimony because of the deprivation of respondent's right to cross-examine. In the alternative, therefore, we move that all of Markward's testimony be stricken.

2. *Markward's F.B.I. report of the "Frankfeld meeting."* The order of the Board states that further Board action on this report is to await the result of its *in camera* inspection. Plainly, if such inspection reveals that the report contradicts or is inconsistent with the testimony of the witness, it must be made available to respond-
17327 ent with the right to examine Markward on it and to introduce it in evidence.

3. *Enlargement of the scope of respondent's examination of Markward.*

A. The order of the Board forecloses respondent from examining Markward for the purpose of showing that her testimony in the Security Hearing was false. Apparently, this action was based on the Board's conclusion, solely from its *in camera* inspection of the transcript of the hearing, that the testimony was true. Obviously, however, the veracity of a witness cannot be determined simply by reading the suspected testimony. At a bare minimum, such a determination requires examination of the witness with respect to the truth or falsity of the suspected testimony. Yet the order of the Board denies respondent this opportunity.

B. The Board states that in evaluating Markward's testimony in this proceeding it will weigh the fact that her notes and F.B.I. reports which were produced in the *Blumberg* case did not contain the statements testified to by her at the trial of the case, and will also weigh "petitioner's

argument with respect thereto." Petitioner's argument consists of an attempt to account for the discrepancies between the notes and the report, on the one hand, and the testimony, on the other, by a series of unsupported assumptions and hypotheses. The Board proposes, in its evaluation of Markward's credibility, to give consideration to petitioner's speculative explanations of the discrepancies while denying respondent an opportunity to test their validity by eliciting testimony from Markward. For example, petitioner "explains" the omissions from Markward's reports by suggesting that the F.B.I did not ask her to report all statements by Communists in which force or violence was advocated since this criterion for reports may not have been established prior to the first Smith Act prosecution in 1948. This hypothesis appears absurd on its face and in any event can have no application to the Payne class room lecture which occurred in 17328 1949. Furthermore, the existence or non-existence of any possible factual basis for petitioner's speculation can be established by examination of Markward. In evaluating Markward's testimony, therefore, the Board must either disregard petitioner's hypothetical explanation of the discrepancies or allow the facts to be ascertained by permitting an examination of Markward on the subject.

C. The Board advances several hypotheses of its own in an attempt to explain the discrepancies between Markward's account of the Payne lecture in this proceeding and in the *Blumberg* case, as well as the discrepancies between her testimony concerning the June 10, 1945 meeting in the *Blumberg* case and in the *Flynn* and *Frankfeld* cases. These hypotheses supply the only basis for the Board's ruling that the discrepancies in question are not relevant to the issue of Markward's credibility. Thus, the Board states that "it could well have been" that petitioner's attorney was not interested in eliciting from Markward the testimony she later gave in the *Blumberg* case concerning Payne's advocacy of violent revolution. The

issue, however, is whether Markward perjured herself in the latter case. The relevant question, therefore, is not what the motives of petitioner's attorney "could well have been" but whether, in preparing to take the stand, Markward ever informed him that Payne had advocated violence in the course of the class room lecture. Obviously, the failure on her part to do so would support the conclusion that she committed perjury in the *Blumberg* case. The facts can be determined by examination of Markward, and inquiry therein should not be precluded by speculation. Similarly, the relevant issue concerning the *Flynn* and *Frankfeld* cases is whether Markward, in preparing to testify, informed the prosecutors that Blumberg had advocated violence at the June 10, 1945 meeting. Again, the Board forecloses examination of Markward on this issue.

17329 This motion is not intended to waive respondent's other objections to the Board's refusal to grant in full the respondent's motion for leave to introduce additional evidence, such as the denial of the opportunity to establish by witnesses other than Markward that she testified falsely in the *Moss* proceeding and was not believed by the Department of Defense.

Respondent requests oral argument on the foregoing motion.

17330

Motion to Require Petitioner to Produce Certain Documents for Use by Respondent or, in the Alternative, for in Camera Inspection of Such Reports by the Board

The respondent, by its attorneys, moves that the Board order petitioner to produce the following documents for the purpose of permitting respondent to inspect them, to offer them in evidence in this proceeding, and to make such further motions as it may deem necessary on the basis of the inspection.

1. All memoranda dictated by the witness, Gitlow, and in the possession of the F.B.I. purporting to explain or

interpret documents received in evidence in this proceeding through Gitlow.

2. Letter written by the witness Gitlow to his wife from Moscow in or about May, 1929, describing the so-called "Molotov Decision."

3. All reports and memoranda of statements made by the witness Budenz to the F.B.I. concerning conversations or meetings between the witness and Morris Childs and Robert William Weiner during the years 1939 and 1940.

4. All reports and memoranda of statements made by the witness Budenz to the F.B.I. concerning a letter written by Joseph Starobin in the spring of 1945 in San Francisco, addressed to the editorial board of the Daily Worker and allegedly describing a conversation between the writer and "the French Comrades" or between the writer and Dimitri Manuilsky.

5. All reports made by the witness Scarletto to the F.B.I. concerning a meeting held at the home of Gertrude
17331 Stoughton in September or October 1950 at which the question of sabotage was allegedly discussed.

In the alternative, respondent moves: (1) that the Board order petitioner to produce the foregoing documents for *in camera* inspection by it; (2) that the Board make available to respondent for the making of such further motions as it may deem necessary such of the documents as the Board finds contradict or are inconsistent with the testimony in this proceeding of the witness or witnesses involved, and (3) that the Board seal and certify as a part of the record in this proceeding such of the documents, if any, as it does not make available to respondent.

The grounds for the foregoing motions are as follows:

Respondent moved for the production of all of the above described documents at the hearing (Tr. 1092-8, 1208, 1216-7, 1273-6, 12011, 12020-5, 12066-16, 11412-6). Its motions were denied by the panel (*ibid.*), and the rulings of the

panel were affirmed by the Board in its Report. Respondent again moved for the production of these documents in its Motion to Strike Testimony of Certain Witnesses or in the Alternative to Reopen Hearing, filed on May 21, 1956. This motion was denied in a Memorandum Opinion and Order of the Board dated August 10, 1956.

Since issuing its Memorandum Opinion and Order of August 10, 1956, the Board apparently has altered its position, at least with reference to *in camera* inspection by it of the relevant F.B.I. reports of informer witnesses. Thus, although the order of August 10 denied respondent's motion for the production of Markward's F.B.I. report relating to the so-called "Frankfeld meeting," the Board *sua sponte* on December 3, 1956, ordered petitioner to produce the same report for *in camera* inspection by it.

All of the considerations which require *in camera* inspection of the Markward report as a minimum
17332 precaution against reliance on tainted testimony are present in the case of the documents which are the subject of the present motion. The record establishes that each of these documents (1) was either prepared by the witness or (in the case of Budenz) consists of a memorandum based on or transcribed from his verbal statements to the F.B.I., (2) is in the possession of the F.B.I. with the possible exception of Gitlow's letter to his wife, and (3) contains an account by the witness of an incident or matter with respect to which he testified in this proceeding. Furthermore, as appears from the Report of the Board, the witness' testimonial version of the incident or matter was relied upon by the Board. Finally, the contradictions and inconsistencies between the testimony of Gitlow, Budenz and Scarletto in this proceeding and their testimony on the same matters in prior proceedings, as well as the internal inconsistencies in their testimony in this proceeding and the other evidence of record impairing their credibility, establishes, at a minimum, that they are untrustworthy witnesses.

Indeed, the case for the production to the respondent for *in camera* inspection by the Board of the Scarletto F.B.I. report concerning the meeting at Gertrude Stoughton's home and the Budenz statement to the F.B.I. concerning the Starobin letter is even more compelling than that for Board inspection of the Markward report. For the testimony of Scarletto and Budenz establishes that their statements to the F.B.I. contradicted their testimonial versions of the same incidents in this proceeding.

Respondent requests oral argument on the foregoing motion.

17334 UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

December 6, 1956

Honorable Thomas J. Herbert
Chairman
Subversive Activities Control Board
811 Vermont Avenue, N. W.
Washington, D. C.

* * * * * * * * * *

Dear Mr. Herbert:

In accordance with the Board's Memorandum Opinion and Order in the subject case, dated December 3, 1956, the Petitioner herewith submits the following documents:

1. The original and two Photostat copy of the report made to the F.B.I. by witness Markward, referred to at pages 5983-5998 of the transcript of this proceeding, relating to the so-called "Frankfeld meeting." These documents are submitted under seal for the Board's inspection *in camera*. It is requested that the Board, after examination of the documents submitted retain the Photostat copy in lieu of the original and that the original be returned

to the Petitioner under appropriate security precautions.

2. A certified copy of the January 18, 1955 public letter to the Secretary of Defense relating to the Moss proceeding.

Sincerely,

JAMES T. DEVINE,
James T. Devine,
Attorney for Petitioner.

17344

Memorandum Opinion and Order

This Memorandum Opinion and Order is being entered pursuant to the oral ruling made at the reopened hearing on December 11, 1956, and the statement that a written opinion would follow. (Tr. 17068-17069.)

On December 6, 1956, respondent filed a Motion to Amend the Memorandum Opinion and Order of the Board entered December 3, 1956, by:

1. Ordering petitioner to produce for its inspection and use in examining witness Markward the transcript of the Annie Lee Moss Security Hearing, or, alternatively, the transcript of the Markward testimony in that hearing.

2. Making available to respondent Mrs. Markward's report to the FBI on the so-called Frankfeld meeting.

3. Enlarging the scope of respondent's examination of Mrs. Markward with respect to:

A. The falsity of Mrs. Markward's identification of Mrs. Moss as a Party member or former member in the Moss Security Hearing.

B. Discrepancies between (1) her testimony in the *Blumberg* case with reference to statements by one

Charles Payne in a 1949 Party class, (2) her notes and report to the FBI concerning that class, and (3) her testimony in this proceeding concerning the same class.

17345 C. Discrepancies between her testimony in the *Blumberg* case on the June 10, 1945, Party meeting and her FBI report on that meeting.

D. The omission from her testimony in the *Flynn* and *Frankfeld* cases on the June 10, 1945, meeting of the statements concerning force and violence which witness Markward attributed to Blumberg when she testified in the *Blumberg* case.

E. The inconsistencies, if any, between her testimony in this proceeding on the so-called Frankfeld meeting and her report to the FBI on that meeting.

Respondent grounds its request for production and inspection of the Moss Security Hearing transcript on the assertion that since the hearing was reopened to permit examination of Mrs. Markward on inconsistencies between her testimony regarding Mrs. Moss in the Security Hearing and in the *American Committee for Protection of Foreign Born* proceeding respondent cannot adequately examine her without access to the Security Hearing transcript.

The Board's review of the Security Hearing transcript showed, as the affidavit of James T. Devine had stated, that Mrs. Markward's identification of Mrs. Moss was confined to her recollection of that name (and an address) in Party records of certain years, none later than 1946, and that identification was not based upon personal identification. As to the *Foreign Born* proceeding, one construction that could be placed upon Mrs. Markward's testimony on cross-examination there was unqualified identification of Mrs. Moss. In fact, respondent in effect took that position in its affidavit filed November 16, 1956 (p. 3, para. 6). The testimony and questions were terse and of such a nature, and the examination of Mrs. Markward was so constructed, however, that the Board was unable

to conclude with any certainty that her testimony was, or was intended to be, contradictory of her prior testimony in the Moss hearing. Of collateral significance was the colloquy between counsel in the *Foreign Born* proceeding at Tr. 3229 *et seq.*, the counsel for the respondent organization there being the affiant (and counsel) here.

Having reviewed the Moss transcript there remained the question of whether inconsistent testimony had been given by witness Markward in the *Foreign Born* proceeding. Since adequate foundation for production of the Moss transcript does not now exist, in our view, it has not been ordered. If, however, respondent upon examination of the witness lays adequate foundation the question of production will become live. The usual method of laying such foundation is, of course, through examination of the witness concerned.

17346 Coming to the Markward report to the FBI on the "Frankfeld meeting," we have examined this report *in camera* and see no need to produce it for inspection and use in examining Mrs. Markward, though it will remain in the record sealed. Our review of the document revealed that, though the phraseology of the witness' testimony at the hearing was not there contained, it reported statements by Frankfeld when which read in the light of the relevant exhibits, e. g., Pet. Exs. 331 (Foster, Dennis statement), 332 (Frankfeld statement), 333 (Thorez statement), and 334 (Togliatti statement) led us to conclude that production is not warranted. The report also contains other statements substantiating testimony she gave at the hearing on what transpired at the Party meeting, in addition to still other matters not here relevant. In short, from our knowledge of the record we concluded that no substantial credibility question was presented.

Respondent, in seeking enlargement of the scope of the examination of Markward, seems to contend that even though the Board's inspection of the Moss transcript shows respondent's charges with respect thereto are not supported, respondent should, nevertheless, be permitted

to examine Mrs. Markward with respect to "the truth or falsity of the suspected testimony." We know of no authority for such a contention. While Mrs. Markward may be examined under the prior inconsistent testimony doctrine, in respect to her testimony in the Security Hearings and in the *Foreign Born* proceeding, the Board will not permit a rehearing of the *Moss* case. Nor do we see reason to alter our views on respondent's other contentions regarding the *Blumberg, Flynn,* and *Frankfeld* cases,[1] as related to our previous opinion of December 3, 1956. To do so would be to impose a new and unreasonable burden on witnesses.

Concerning respondent's renewal of its motion at the end of the reopened hearing for production of the Markward testimony at the Moss Security Hearing transcript (Tr. 17133) this is also denied. We might say in elucidation that the examination of Mrs. Markward at the hearing disclosed that no adequate foundation in support of the renewed motion exists. The Moss Security Hearing transcript, as previously stated, will remain in the record, sealed. It is, therefore,

ORDERED that respondent's motion and the foregoing renewed motion are hereby denied.

By Direction of the Board.

[SEAL]

CHARLES C. WISE, JR.,
Charles C. Wise, Jr.,
Executive Secretary.

December 13, 1956
Washington, D. C.

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[1] As the trial court stated in the *Blumberg* case, *supra*, it is not a test of a witness' recollection or credibility if an attorney in another case "for some reason or for no reason," omitted to ask the witness about a subject testified to (C.P. Ex. 93, p. 1362 p.).

17350

Memorandum Opinion and Order

Respondent on December 6, 1956, filed a motion to require production of certain documents, with an alternative request contained therein. This motion was opposed by petitioner in its memorandum filed December 10, 1956.

In its Order issued November 5, 1956, the Court of Appeals granted the Board permission, on appropriate showing, to reopen the hearing only to examine the credibility of the witness Markward. Moreover, we see no reason to change our previous ruling in the Memorandum Opinion and Order dated August 10, 1956, on requests similar to those of this motion.

It is, therefore,

ORDERED that respondent's motion for production of documents, and the alternative request, filed December 6, 1956, are hereby denied.

By direction of the Board.

[SEAL] THOMAS J. HERBERT,
Thomas J. Herbert,
Chairman.

December 17, 1956
Washington, D. C.

16911 **Argument in Behalf of Respondent**

By Joseph Forer

* * * * * * * * * * *

16912 The third point I would like to make goes to the approach that we think the Board should take. So far as the result is concerned, we think we know what the result will be. So far as the approach is concerned, I want to suggest to the Board that it is the obligation of the Board to decide this anew from the original evidence less the exculpated evidence. In other words, it isn't a question of taking the report of your predecessor members,

going through it with a red pencil and deleting whatever references there are to the testimony of Paul Crouch or Manning Johnsen or Matusow and then leaving
16913 the rest of it stand and all the other findings stand, at least that there is something else in the report which relates to the particular findings.

I think, in other words, you have to write a whole new report on your own. I think there are several reasons for this.

First of all, the decision is now yours and the Board now must take responsibility for it. It is not the responsibility of your predecessors.

Secondly, the Supreme Court returned the case and said that the Board had to reconsider the entire record, and the Supreme Court was careful to point out that it was entirely possible that the old Board took into account the testimony of Crouch, Matusow and Johnson even in making findings which did not specifically refer to their testimony or was not annotated by their testimony. As the Supreme Court in Justice Frankfurter's opinion said, it is entirely possible that the Board was influenced in other findings by the testimony of these three individuals.

So you cannot assume that any finding made by the old Board, even based on testimony other than that of these three characters, was not influenced. You have to make your own finding.

In that connection also it is necessary for this Board to make its own independent evaluation of the credi-
16914 bility of the witness.

* * * * * * * * * *

17068 Chairman Herbert: Be seated.

During the noon recess the Board has been considering the two motions that were argued this morning.

* * * * * * * * * *

We want to state at this time for the guidance of the parties during the hearing about to commence that the

Board's review of the Moss security hearing transcript showed, as the affidavit of Mr. Devine had stated, that Mrs. Markward's identification of Mrs. Moss was confined to her recollection of that name and an address in party records for certain years, none later than 1946, and that identification was not based on personal identification.

As to the Foreign Born proceeding, one construction that could be placed upon Mrs. Markward's testimony on cross-examination there was unqualified identification of Mrs. Moss. In fact, Mr. Forer takes that position in his affidavit filed November 16. The testimony and questions there were terse and of such a nature, and the
17069 examination of Mrs. Markward was so constructed, however, that the Board was unable to conclude with certainty that her testimony was or was intended to be inconsistent with her prior testimony in the Moss hearing.

Of collateral significance was the colloquy between counsel in the Foreign Born proceeding at transcript pages 3229, et seq., counsel for the Respondent organization there being the affiant and counsel here.

Having reviewed the Moss transcript, therefore, there remained the question of whether inconsistent testimony had been given by the witness Markward in the Foreign Born hearing.

Since adequate foundation for production of the Moss transcript does not now exist in our view, it has not been ordered. If, however, Respondent upon examination of the witness lays adequate foundation the question of production will become live. Of course the usual method of laying such foundation is through examination of the witness concerned.

The Board has heretofore directed counsel to produce Mrs. Markward. Is she here with us now?

* * * * * * * * * * *

Mr. Forer: May the record show, Mr. Chairman, that Mrs. Markward was present in the hearing room when the Chairman read his statement that he has just made.

17070 Chairman Herbert: That is quite correct.

* * * * * * * * * * *

Mr. Forer: Mr. Chairman, the Board's order directed the Respondent to produce the relevant excerpts from the testimony of Mrs. Markward in the Blumberg case. I should explain that by cooperation between counsel for the Respondent and counsel for the Petitioner we have photostated those pages of Mrs. Markward's testimony in the Blumberg case which either side considered might have relevance, and then we have put them together in one integrated exhibit so that it will be one exhibit and in the order of the page numbers.

As a matter of fact, you can tell which pages were selected by the Attorney General because those pages happen to have a smaller margin than the pages that we photostated.

Also by agreement between counsel it is agreed that these are authentic copies of Mrs. Markward's testimony, subsequent, however, to either side being able to actually check it against the record and if any discrepancies are found, to call it to the attention of the Board.

Also, I should say, and this is with our consent, Mr. Devine reserves the right, to which we are happy to consent, possibly to introduce a few more pages from Mrs. Markward's testimony in the Blumberg case. He

17071 doesn't know yet whether he will want to so introduce them, but if he does we will have no objection.

So at this time I would like to have this, which is the except of Mrs. Markward's relevant testimony as submitted by both sides in the Blumberg trial, received in evidence as an exhibit.

* * * * * * * * * * *

Mr. Forer: It has been offered and admitted, is that correct?

Chairman Herbert: Correct.

(Respondent's CP Exhibit No. 93 was marked for identification and received in evidence.)

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17074 Mr. Forer:

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17075 Now I want to offer in evidence a certified copy of the exhibits in the Blumberg case, which consists of Mrs. Markward's reports to the FBI and Mrs. Markward's notes on the Payne Classes which were admitted in evidence in the Blumberg case.

* * * * * * * * * * *

17076 Mr. Forer: Also the preceding exhibit will indicate what appears here as Exhibit LL in the Blumberg case is a copy of Mrs. Markward's notes on one of the Payne classes. What appears as Exhibit MM——

* * * * * * * * * * *

Mr. Forer: What appears as Exhibit MM is a copy of Mrs. Markward's report on the Payne class. What appears as Exhibit NN is a copy of Mrs. Markward's notes on another Payne class. What appears as Exhibit OO is a copy of Mrs. Markward's report to the FBI on the Payne class.

* * * * * * * * * * *

17077 I therefore offer this in evidence. It is a certified copy from the records of the Federal Court in Philadelphia.

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17079 Chairman Herbert: Mr. Forer, if you will note the second last paragraph of the memorandum opinion and order of December 3. That is where the Board

ordered that Respondent submit a certified copy of the pertinent testimony of the witness Markward in the Blumberg case.

Mr. Forer: Yes.

Chairman Herbert: That was done because you made several references to it in your affidavit and made certain allegations which were uncontroverted by the Petitioner's counsel. That is why the Board of course admitted the exhibit previously, which is in a sense jointly agreed upon between counsel.

That is in order to furnish the Board sufficient substantiation or verification of your allegations according to what this last admitted exhibit shows the Board has considered your proffer, and

The Board does not feel that your proffer is in accord with the situation and it therefore is denied and the objection of the Petitioner is sustained.

Mr. Forer: I ask that that be marked for identification.

Chairman Herbert: It may be marked for identification.

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17080 (CP Exhibit No. 94 was marked for identification and was rejected.)

Mr. Forer: We ask that Mrs. Markward be recalled to the stand for the purpose of further cross-examination.

Mr. Devine: I would like to make a statement for the record first relative to a previous reference made by Mr. Forer. I would like the record to show that there were three spectators in the room, one of whom is Mrs. Markward, that Mrs. Markward was in the hearing room prior to the arrival of the Board, that Respondent's counsel Mr. Forer, who has cross-examined Mrs. Markward in the past is presumably acquainted with her and had knowledge of her presence in the hearing room. If he did not have that knowledge I think he should so indicate for the record.

Mr. Forer: I never heard anything so silly in my life.

Chairman Herbert: Call Mrs. Markward.

17081

Mary Stalcup Markward

was called as a witness and, having been duly sworn, was examined and testified further as follows:

Cross-Examination

By Mr. Forer:

. . . . . .

Q. It is a fact, is it not, Mrs. Markward, that you testified in September 1954 in a Security Board hearing of the Department of Defense involving Mrs. Annie Lee Moss?
A. To the best of my recollection that is about the date.
Q. Can you tell us what date in September 1954 it was?
A. I don't recall exactly, sir.
Q. All right.

. . . . . .

17082 Q. Mrs. Markward, will you tell us what you said in that Security Board hearing concerning your knowledge of Mrs. Moss as a member or former member of the Communist Party, or the Communist Political Association. A. I can't repeat it like a phonograph record, but I can give you the substance of
17083 what my testimony was in that regard. I testified that I did recall her name on the various Communist Party records, that I did recall several addresses where she had lived, that I did recall certain information which was contained on the Party records as to her age, sex, race, occupation, union affiliation, and so forth, as far as that is concerned. I do not say that is everything I had to say, but I think in general that that summarizes what I had to say.
Q. Is that the best of your recollection all you said on that subject?

. . . . . .

The Witness: I was on the stand almost a whole day. This business was batted around a good bit. I said

the same things in different words several times that day, I am sure. But I think in general that is the general limitation of what I had to say. I don't believe that I identified her any more completely than that or any less completely than that. I don't know of anything else that I had to say.

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Q. Did you say anything about whether from your knowledge of Mrs. Moss had ever been a member of the Northeast Club of the Communist Party? A. I said so, that is correct.

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Q. You said it? A. Yes, that I did know she had been a member of the Northeast Club of the Communist Party.

Q. Did you say what dates she had been a member of the Northeast Club of the Communist Party? A. I said in general that the dates that I knew she was a member of the Northeast Club of the Communist Party. She could have been a member of the Northeast Club of the Communist Party before I was, but I didn't know that then. I did come to know that after I had been a member for a while.

Q. Do I understand, then, that you testified at the Security Board hearing that she had been a member of the Northeast Club of the Communist Party when you joined the Northeast Club and was still a member when the Northeast Club dissolved? A. Again——

Q. In substance. A. She may have been, but when I joined the club, when you walk into a room of strange people you don't immediately know who every one of them is. I wasn't introduced to all of them, and the party records weren't open to me at that time. It was only after I received an office in the club and became more active and the various records of the club were available to me that I had knowledge of what those records said.

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Q. All I am trying to get is whether or not you put any period on the time of membership of Mrs. Moss in the Northeast Club of the Communist Party in your testimony at the Security Board hearing. That is all I am trying to find out now. A. My recollection of what I said there is that she was a member of the Northeast Club at the time that it was dissolved and the Communist Political Association was formed in Washington, D. C.

Chairman Herbert: Could you fix that time?

The Witness; That time was at the end of May or the first of June in 1944. I don't know that I said it in those words but in general that is what is true and if I had been asked the question and it called for that answer, that is what I would have said.

* * * * * * * * * * *

Q. Didn't you also say she had been a member for some time before the dissolution of the Northeast Club, in a sense? A. That is correct.

Q. You also testified, did you not, that you knew she had been a member of the Communist Political Association? A. I did.

Q. Did you testify as to how long to your 17086 knowledge she had been a member of the Communist Political Association? A. As I recall, I testified that she was a member at least until the registration, that is, when members reaffirmed their desire to remain in the organization and received new party books. I recall certain records about that time showing her affiliation. It could have been any time after November of 1944. It could have been as late as January or so of 1945. I do not recall after that period.

Q. Mrs. Markward, it is a fact, is it not, that it was clear to you that the Annie Lee Moss that you were testifying about was the Annie Lee Moss that was the person involved in that Security Board proceeding and not some other person by the same name, is that right?

A. It was certainly my understanding that that was true.

Q. As a matter of fact, you were sure in your own mind that the Annie Lee Moss that you were testifying about is the same Annie Lee Moss that was involved in that proceeding? A. That is right.

Q. As a matter of fact, the Annie Lee Moss you were talking about you were able to identify by reference to addresses of residence, is that correct? A. That is correct.

Q. And it is a fact that those addresses coincided quite accurately with the address of the Annie Lee Moss that was involved in the Security hearing, is that 17087 correct? A. So far as I know, it is correct, yes.

Q. You were able to identify the Annie Lee Moss that you were talking about as a person who had been a worker in the Pentagon cafeteria? A. That is correct.

Q. And as a person who later had gone to work in the Pentagon? A. I did not say that.

Q. No, I am not saying that, but you know that. You know that now, don't you?

Chairman Herbert: Objection if raised will be sustained to that question as framed.

Mr. Devine: I object.

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Q. It is a fact, is it not, that the Annie Lee Moss that you were testifying about was identified by you as a person that worked at one time in the Pentagon cafeteria, isn't that correct? A. That is correct.

Q. You know, do you not, that the Annie Lee Moss that was involved in the Security proceeding was identified as a person who had worked in the Pentagon cafeteria, correct? A. I don't know that from personal knowledge. I know from reading it in the newspapers and reading the hearings and so forth, that that was the same person, yes.

17088 Q. You know that by having attended a hearing before the McCarthy Committee in February 1954, don't you? A. That is correct, but not——

Q. It is a fact, is it not, that you were present at a hearing of the McCarthy Committee when the committee identified Mrs. Annie Lee Moss the same Mrs. Annie Lee Moss who later was involved in this security hearing, as a person who lived at 525 and a half Second Street, Northwest, and who had been a cafeteria worker?

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The Witness: I was present when that statement was made and I heard it, yes

By Mr. Forer:

Q. As a matter of fact, you also testified before the McCarthy Committee that there was no possible doubt in your mind that the Annie Lee Moss that you
17089 knew as a member of the Communist Party or knew about as a member of the Communist Party was the same Annie Lee Moss who was called before the McCarthy Committee and who later on appeared in the Security Board proceeding, isn't that correct? A. I was asked for my opinion, and I answered. I don't remember having the word "possible" in there but I believed her to be the same individual, yes

Q. Mrs. Markward, you may use this if it will help you refresh your recollection. It is a fact, is it not, that you testified before the Permanent Subcommittee on Investigations of the Committee on Government Operations known as the McCarthy Committee, on February 23, 1954, is that correct? A. That is correct.

Q. Mrs. Markward, inviting your attention to page 316 of the printing office print of this, I want to ask you if Senator McCarthy asked you the following question and you made the following answer at this hearing before the McCarthy Committee:

"Question: Mrs. Markward, you have been cooperating

with our committee and the FBI. You know much more about this woman, obviously, than any of the committee and the staff know. Having been informed of her address and checked her employment, is there any question at all at this time that the Annie Lee Moss that you are discussing is the Annie Lee Moss that is now working in the Code Room at the Pentagon?"

17090 Answer by Mrs. Markward: "No question in my mind, sir."

At that hearing were you asked that question and did you give that answer? A. Yes, sir.

Q. If you were asked that question now, your answer would be the same, would it not? A. That is correct.

Q. Mrs. Markward, the first time you ever testified anywhere was on June 11, 1951, in executive session of the Un-American Activities Committee, is that correct?

Q. That is not correct? A. That is the first time I testified publicly, I believe.

Q. I am talking about this executive session. A. No. In executive session I testified much earlier than that before that committee.

Q. I am not now talking about interviews that you may have had with members of the committee staff. I am talking about an actual hearing at which you testified. A. Well, there was a hearing on that day, yes, sir.

Q. Did you testify at any earlier date? A. Yes, sir.

Q. What is the first date on which you testified? A. I don't recall exactly what date it was. It was subsequent to about the 8th of February 1951, when

17091 the Daily Worker published notices of my expulsion from the party.

Q. How soon was it—How long was it before the hearing of June 11, 1951? A. I don't recall, sir. I had interviews first and then we had testimony. June 11 was the over-all testimony.

Q. Do I understand from you that this June 11 was a sort of recapitulation of your interviews and testimony—

is that the size of it? A. Substantially that is correct.

Q. On June 11, 1951, you did testify before the Un-American Activities Committee in executive session and your testimony was later made public, is that correct? A. That is correct.

Q. Is it fair to say, Mrs. Markward, that perhaps the major portion of your testimony in this hearing of June 11, 1951, consisted of identifying persons who were known to you as having been members of the Communist Party or the Communist Political Association in the District of Columbia?

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The Witness: I am not sure actually percentagewise how many words go to names and how many to 17092 other words. As far as my testimony was concerned, my recollection of what happened is that the House Un-American Activities Committee asked me about the Communist Party in the District of Columbia and how it functioned and who it was that were involved in making it function. Whether percentage-wise there were more words as to naming names than to telling how it worked I don't know. Simply because your question so specifically stressed the major portion is names, I hesitate to give you a categorical question. It may be true, but on the other hand the import of the testimony was the how and what and then finally the who.

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Q. Mrs. Markward, it is a fact, is it not, that at this hearing on June 11, 1951, you identified hundreds of persons as having been members of the Communist Party or the Communist Political Association in the District of Columbia area, is that correct? A. I think there are actually over, a little over, a hundred names in that. I am not absolutely certain as to the number, but I think there are not too many more than that.

Q. It is a fact, is it not, that you had already given the committee on Un-American Activities a list of 76 persons who were known to you as members of the Communist Political Association in Washington, D. C.?

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17093 The Witness: If there are 76 on the list—I haven't counted them.

Mr. Forer: This may help you recall (indicating document). Just take a look there and see if it will stimulate your memory.

The Witness: It says there are approximately 76 names of people, and I say I would take Mr. Owens' preliminary statement as to how many people were on that list.

By Mr. Forer:

Q. Will you turn to page 4470 of that print, which may help you answer the next question. It is also a fact, is it not, that at that hearing you were asked and you gave the names of members of the Northeast Club of the Communist Party? A. That is correct.

Q. Suppose you turn to page 4498. That is toward the end of the hearing, is it not? A. Sort of, yes.

Q. It is a fact, is it not, that after you had listed the names of members of the various clubs of the Communist Party and Communist Political Association, when you got toward the end of the hearing the person examining you for the committee asked if you could

17094 think of any more names that you had not mentioned previously?

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The Witness: Yes.

I don't see it right here, but I believe I was asked a question in substance like that.

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Q. Let me call your attention to Mr. Owens' statement there. You recall, do you not, that toward the end of the hearing, after you had gone through the various clubs and given the names of the members of the clubs, Mr. Owens, who was questioning you, asked you to reflect for a moment as to whether there were some individuals that you could remember as members of the party whom you had not placed in any of these clubs in the prior testimony in that hearing. Is that correct? A. That is correct.

17095 Q. Then following that you read one or more other names, is that correct? A. That is correct.

Q. After that Mr. Owens supplied some names and asked you whether you were acquainted with people whose names he supplied, is that correct? A. That is correct.

Q. And that went on for a while? A. That is right.

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17096 Q. Let me restate it rather than have the reporter read it.

As we have just seen, after you had given the names of people who belonged to various clubs and after Mr. Owens had asked you if you could think of any more names that you had not already mentioned, following that Mr. Owens asked you a series of questions, do you know so and so, do you know so and so, and in each case you answered that you did know them and then you identified them as members of the Communist Party. A. That is correct.

Q. I am asking you, those names that Mr. Owens supplied at the very end, which were names which you had not earlier supplied, were names that you had given Mr. Owens in interview or prior testimony. You know that that is how Mr. Owens knew who to ask you about? A. I can't give you a categorical yes or no on that. Most of it—I won't say "most", that is a bad word. Many of the names that Mr. Owens asked about he already had

information on, and I had sometimes more information and I am sure sometimes less than he did. But I do not deny that there had been any discussion about
17097 these names prior to the time that on the record I testified about the names.

Q. Did Mr. Owens ask you about a single person at that part there near the end that you hadn't already previously identified to the staff of the Un-American Activities Committee as having been a member of the Communist Party? A. I don't actually believe so. I don't say it is impossible, but I don't believe so.

Q. Do you remember having told Mr. Owens or any other member of the staff of the Un-American Activities Committee before this hearing the name of any person who was a member of the Communist Party or the Communist Political Association to your knowledge whose name was not brought out in that hearing of June 11, 1951? A. I would believe yes.

Q. You would believe yes? A. Yes, not many but I think there were several.

Q. You think there were several. Do you have any explanation for the omission of their names from this hearing of June 11, 1951? A. It was a more or less mechanical thing that there would be a name which would come up. We were on one tangent and we would forget to go back and get it on the record. In any of these executive sessions there is a lot off the record and on the record, and there were several names that have come up in testimony since that I am positive I dis-
17098 cussed with the hearing officers but it just didn't get on the record at the time of the actual hearing.

Q. In other words, any such omission would be more or less due to mechanical matters? A. More or less.

Q. Mrs. Markward, in your testimony of June 11, 1951, did you tell the Un-American Activities Committee that Annie Lee Moss had ever been a member of the Communist Party? A. I did not.

Q. In your testimony of June 11, 1951, did you tell the Un-American Activities Committee that Mrs. Annie Lee Moss had ever been a member of the Northeast Club of the Communist Party? A. I did not.

Q. In that testimony did you tell the Un-American Activities Committee that Mrs. Annie Lee Moss had ever been a member of the Communist Political Association? A. I did not.

Q. In these interviews you had before the hearing of June 11, 1951, interviews and any testimony—and I am talking about interviews with the staff of the Un-American Activities Committee—did you tell the staff of the committee or the committee itself that Mrs. Annie Lee Moss had been a member of the Communist Party or the Communist Political Association or the Northeast Club of the Communist Party? A. I have no
17099 recollection of telling them anything about that.

Q. It is a fact, is it not, that in this hearing of June 11, 1951, you named some persons who were to your knowledge members of the Communist Party but with whom you had not been personally acquainted but who you knew to be members from records and similar sources. A. A few, yes.

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17100 Q. We have been talking about your testimony of June 11, 1951, before the Un-American Activities Committee. You testified again before the Un-American Activities Committee a month later, is that correct, on July 11, 1951? A. It was about that date.

Q. Let us see if this will help you. A. That is it within a day or two anyway.

Q. Just to refresh your recollection that you did testify there on July 11? A. Yes, sir.

Q. That testimony related to Communist activities in the Maryland area, is that correct? A. That is correct. It was primarily aimed toward Baltimore, but the surrounding area was included to some extent.

Q. It is a fact, is it not, that the District of Columbia and Maryland were one district of the Communist Party, is that correct? A. That is correct,
17101 but that particular day's testimony was aimed more at the testimony regarding what I had known about Baltimore than it was about what I had known about the District of Columbia.

Q. But there were, naturally enough, some references to individuals who had been members of the Communist Party or the Communist Political Association in the District of Columbia, is that correct? A. Some, yes.

Q. In that hearing of July 11, 1951, did you tell the committee on Un-American Activities that Mrs. Annie Lee Moss had been a member of the Communist Party, the Northeast Club of the Communist Party or the Communist Political Association? A. I did not.

Q. Do you recall testifying before the McCarthy Committee in August 1953 regarding a Mr. and Mrs. Rothschild? A. Yes, sir.

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17102 Q. Those were announced by the committee as hearings involving Communism in the Government Printing Office, is that correct? A. As far as I recall, yes, sir.

Q. You also recall that before that hearing you were interviewed by members of the staff of the McCarthy Committee? A. That is correct.

Q. Mr. Roy Cohn, Mr. Carr and several other persons, is that correct? A. At this moment I only recall discussing it with one of the investigators, Mr. Hawkins.

Q. Whoever it was. Let us skip that. A. Yes.

Q. You were interviewed by members of the staff of the committee? A. Member or members, yes, sir.

Mr. Devine: She stated a member, I believe, Mr. Forer.

17103 By Mr. Forer:

Q. Isn't it a fact that this member or members of the staff of the committee in substance informed you or you knew from what he said that the McCarthy committee was very interested in the subject of Communists working in the Government, didn't you know that? A. Yes, sir.

Q. Prior to this hearing on the Government Printing Office in August of 1953, did you tell either the McCarthy Committee or any member of the staff of the McCarthy Committee that Mrs. Annie Lee Moss had been a member of the Communist Party or the Communist Political Association?

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The Witness: May I answer that other than just yes or no?

Mr. Forer: If you can give a responsive answer, that is all I want.

The Witness: You have just been very clear to point out that I knew that that committee was interested
17104 in Communists working for the Government.

By Mr. Forer:

Q. You knew that in August of 1953? A. That is correct, but I didn't know that Annie Lee Moss was working for the Government. So therefore I didn't tell them anything about Annie Lee Moss. The answer is no, I had not informed them anything about Annie Lee Moss working for the Government.

* * * * * * * * * * *

17105 Isn't it a fact that you did not inform the McCarthy Committee or its staff prior to August 17, 1953, or on August 17, 1953, that Mrs. Annie Lee Moss had been a member of the Communist Party or the Communist Political Association? Isn't that a fact?

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The Witness: I did say that, no, I had not informed the committee, after I finished the explanation I made.

* * * * * * * * * * *

17106 Q. It is a fact that on August 17, 1953, although you didn't know whether or not Mrs. Moss had worked for the government, you did know that Mrs. Moss had worked in a government building, namely, the Pentagon? You knew that, did you not? A. Yes, sir.

Q. You again testified before the McCarthy Committee on February 23, 1954, did you not? A. Yes, sir.

Q. That is the time that you publicly testified for the first time, publicly, that Mrs. Annie Lee Moss had been a member of the Communist Party and a member of the Communist Political Association, is that correct? A. That is correct.

Q. The day before February 23, 1954, you had testified to that effect in a closed sessison of the House Committee on Un-American Activities, is that correct? A. That is correct.

17107 Q. And that testimony has never been released to the public, is that correct? A. As far as I know it has not.

Q. That was in executive session? A. It was, yes, sir.

Q. So the first committee that you told that Annie Lee Moss was a member or had been a member of the Communist Party was the Committee on Un-American Activities? A. No, sir.

Q. You had told some committee before that? A. I had been contacted by the McCarthy Committee before February 22. I hadn't had a hearing there, but they had contacted me in regard to this individual.

Q. So the first committee that you told, then, was the McCarthy Committee or the staff of the McCarthy committee? A. That is correct.

Q. When did you first tell that to the staff of the McCarthy Committee? A. It was late in the week prior to February 22-23.

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Q. Who was the person that you first told this to? A. To the best of my recollection it was Mr. Herbert
17108 Hawkins.

Q. Mr. Herbert Hawkins. A. That is right.

Q. He just came to see you and asked you if you knew whether Mrs. Annie Lee Moss had been a member of the Communist Party or the Communist Political Association? A. He called me on the telephone.

Q. He asked you that over the telephone? A. Yes.

Q. Did he mention the name of Mrs. Annie Lee Moss first? A. That is right.

Q. You answered in the affirmative? A. That is right.

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17109 Q. When you testified before the House Committee on Un-American Activities June 11, 1951 and named persons who had been members of the Communist Party in the District of Columbia, did you only name persons who had been employed by the Government? A. No.

Q. Mrs. Markward, I am correct, am I not, that when you joined the Communist Party in May of 1943, you became a member of the Northeast Club at that time? A. That is correct.

Q. Then you became press director of that club in October of 1943, and then you became chairman of that club in January or February of 1944, is that correct? A. That is correct.

Q. You remained chairman until about June of 1944 when the Communist Party changed over to the Communist Political Association, correct? A. That is correct.

Q. The Communist Political Association stayed
17110 in existence until about the summer of 1945, when the Communist Party was reconstituted, correct? A. Partially correct.

Q. What part is incorrect? A. Nationally the Communist Party was re-formed about the end of July or August of 1945. The District had their convention one immediately before and one immediately after the Na-

tional Convention, but the City of Washington didn't have their convention until the 14th of October 1945, so officially while we were part of the National Communist Party we used the name of Communist Political Association of Washington until October of 1945.

Q. You were treasurer of the Political Association, is that correct? A. That is correct.

Q. It is a fact, is it not, that it was a requirement of the Communist Party that members of th se neighborhood clubs such as the Northeast Club, should attend meetings of the clubs, is that correct? A. That was one of their more flexible rules. It was on the books to be a rule that every one must attend, but in fact there were many members who attended rarely, some hardly at all.

Q. You mean it was a requirement but it wasn't 17111 fully followed? Is that the idea? A. That is correct. It depended on what the person did other than attend the meetings. If they carried out the party policies, it wasn't too important whether they attended the meetings.

Q. It was a requirement, wasn't it, that the member of the club carry out assignments? A. That is correct.

Q. A person couldn't be a member or couldn't remain a member of the Communist Party for any substantial period of time without attending any meetings or carrying out any assignments, could he? A. The nature of the various assignments was such that he could be a member and carry out assignments without necessarily attending the club meetings. The important criteria was the fact that in the community, in mass organizations any place, they didn't do anything that was anti-party policy. Also, when they were asked to push a party policy within a mass organization or union in their neighborhood, circulate a petition or anything like that, they could do that without attending party meetings.

Q. Mrs. Markward, Mrs. Moss was, according to you, a member of the Northeast Club of the Communist Party at a time when you were a member and press director

and chairman of the Northeast Club, is that correct? A. That is correct.

17112 Q. Is it your testimony that during all that time both of you were members and you were at least an officer of the Northeast Club and you never saw Mrs. Moss at a meeting of the Northeast Club? A. My statement is that I don't recall having seen her. I don't recognize her as a person whom I have seen. I never testified that I did see her, and I have never testified absolutely that she was never present.

Q. Isn't it a fact, that while you were in the Northeast Club you often went out on assignments with other members of the Northeast Club? A. That is right.

Q. You don't know whether or not you ever went out on an assignment with Mrs. Moss? A. I do know that I did not go on an assignment with Mrs. Moss, yes.

Q. You know you didn't? A. That is right.

Q. But you didn't know whether or not you ever attended a meeting with her? A. That is correct.

Q. You know, do you not, that at one time Mrs. Moss roomed with a woman named Hattie Griffin? A I know that, yes, sir.

Q. You testified that you have attended meet-
17113 ings of the Communist Party at the home of Hattie Griffin? A. That is correct.

Q. But you say you don't recall ever having seen Mrs. Moss at the home of Hattie Griffin? A. That is correct.

Q. You have testified, have you not, that you knew that Mrs. Moss paid dues to the Communist Party? A. That is correct.

Q. And dues to the Communist Political Association? A. That is correct.

Q. As a matter of fact, during the time of the Communist Political Association the members paid their dues to you directly, isn't that correct? A. Some of them did, yes.

Q. Only some of them? A. Their dues came to me directly, but when members did not attend meetings

other more active members were assigned to call on them and take literature to them and collect their dues, and they brought them to me.

Chairman Herbert: Did you keep track of who specifically paid dues to you?

The Witness: Yes, sir. Well, I kept track of the members whose dues were paid. My records showed that dues were paid for so and so and so and so. Whether they paid them to me personally or whether I
17114 had asked, to pick a name out of the air, Sally Jones to go see Susie Smith to collect her dues and she was to bring them back, I would record that Susie Smith's dues were paid.

By Mr. Forer:

Q. Mrs. Markward, I want to ask you whether you were asked the following questions and gave the following answers in a hearing before the McCarthy Committee of February 23, 1954. The questioning at this point is by Senator Potter. I will read them to you from page 312 of the printed hearings.

"Senator Potter: Did I understand that you were treasurer of the Communist Political Association of Washington, D. C.?

"Mrs. Markward: Yes, sir.

"Senator Potter: As treasurer the members of the Association paid their dues to you?

"Mrs. Markward: During the time of the Communist Political Association the members themselves paid the dues directly to me. After the Communist Party was re-formed in 1945, and the membership was broken down into smaller cells or clubs, I got most of the dues from the secretary or another officer of the club. At that time I had occasion to meet with the officer of the club to find out the names of the members."

Were you asked those questions and did you
17115 give those answers? A. I did.

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Q. You testified in the proceeding before the Subversive Activities Control Board against the American Committee for Protection of Foreign Born on October 18, 1955, did you not? A. Yes, sir.

Q. I want to ask you whether you were asked the following questions and gave the following answers on cross-examination in that case. At page 3171:

"Question: When you were a member of the Northeast Club was Annie Lee Moss a member?

"Answer: She was.

"Question: When you refer to testifying in several loyalty board hearings among other loyalty hearings you testified in the case of Annie Lee Moss, did you not?

"Answer: I did."

Skipping a few questions and going to page 3172:

"Question: Now you know, do you not, that Mrs. Annie Lee Moss is presently employed by the Department of Defense?

17116 "Answer: That is what I read in the papers."

Were you asked those questions and did you give those answers? A. Yes, sir.

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17118 Q. Were you here when the hearing opened this afternoon and the Chairman opened with a statement——

Chairman Herbert: It is already a matter of record that she was.

17119 Mr. Forer: All right. It is a matter of record that she was here.

By Mr. Forer:

Q. I want to ask now, did you hear what the Chairman said? A. I did.

Q. I believe you testified in a number of cases before the Subversive Activities Control Board, is that correct? A. That is correct.

Q. That includes the Civil Rights Congress case? A. That is correct.

Q. The Labor Youth League case. Did you ever testify in that? A. Yes, sir.

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17122 Q. Are you receiving pay from the FBI at regular intervals, on a regular basis? A. No, sir.

Q. But you are getting paid as you render service from time to time, is that correct? A. From time to time, I still receive—I have in the past received money from the FBI. I don't anticipate any further receipt. I don't know.

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17124 Direct Examination

By Mr. Devine:

Q. Mrs. Markward, during your period in the Communist Party was Annie Lee Moss ever a functionary of the party? A. Not to my knowledge, no, sir.

Q. Was she what you might term a very active worker. A. Not to my knowledge.

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Q. When you were a member of the Northeast Club when you first joined up with the club of the party, how many members were in that club? A. My present recollection, sir, is that there must have been around 40. I had no way of having an exact count as to how many they had. I didn't see the records at that time.

17125 But that is my best estimate.

Q. How often did the club hold meetings? A. About every two weeks.

Q. What would you say would be the average attendance at club meetings? A. The average attendance I would believe would be 12 or 14, something like that.

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Q. Did you get an opportunity to know all the members of this club? A. I did not.

Q. Did you have any sort of recruitment drives during your early period in the Northeast Club? A. In the spring of 1944 a nation-wide recruiting drive of the Communist Party was conducted and the Northeast Club participated in that drive.

Q. Do you know how many or approximately how many new members were recruited during that drive? A. My recollection is that there must have been almost 70 members recruited at that time into the party. They didn't all remain members of the party. Technicalities prohibited some of them from remaining members.

17126 I think actually about that number were recruited.

Q. During what period chronologically were these new members added to the original 40? A. From February to the middle of May.

Q. Did you know all of these 70 new members? A. I did not.

Q. When did the Communist Party change its name and become the Communist Political Association in this area? A. In Washington it was around the first part of June.

Q. How many members were in the Communist Political Association around that time? A. Approximately 300 in the open part of the organizatin.

Q. Did you know all of these 300 members of the Communist Political Association? A. I did not.

Q. In the various hearings that you have appeared in have you ever identified physically Annie Lee Moss as a member of the Communist Party? A. I have never recognized her as a person whom I knew as a member of the Communist Party. My testimony has been as to what the records had to say about a person by the name of Annie Lee Moss.

Q. When you were questioned in the committee for Protection of Foreign Born case before this Board

17127 do you recall being asked by Mr. Forer the following question:

"When you were a member of the Northeast Club was Annie Lee Moss a member?" A. Yes.

Q. Do you recall what your answer was? A. Yes.

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Q. Do you recall being asked on cross-examination by Mr. Forer the following question:

"When you were a member of the Northeast Club was Annie Lee Moss a member?" Do you recall that question? A. Yes.

Q. What was your answer to that question? A. "yes."

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Q. Did Mr. Forer ask you what was the basis of your answer, to the best of your recollection? A. I don't recall that he did.

Q. What was the basis for the answer that you
17128 gave to the question at that time? A. According to my recollection of the records maintained in the Northeast Club by myself, Annie Lee Moss had been a member of that club when I was a member of the club.

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Recross Examination

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17131 Q. Mrs. Markward, I believe you have already testified in previous hearings that you made regular reports to the Federal Bureau of Investigation. A. That is correct.

Q. In these reports did you say that Annie Lee
17132 Moss was a member of the Comm nist Party? A. I did.

Q. You reported that to the Federal Bureau of Investigation? A. I did.

Mr. Forer: Mr. Chairman, we ask that the Petitioner be required to produce the report or reports made by Mrs. Markward to the FBI reporting that Annie Lee

Moss was a member of the Communist Party or the Communist Political Association.

Chairman Herbert: Your request is overruled.

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Mr. Duncan: Mrs. Markward, have you ever at any time in any proceeding of this nature made personal identification of Annie Lee Moss or is your testimony based on the records of the Communist Party?

The Witness: My information has been based on the official Communist Party records. I have never recognized her as a person whom I knew as a Communist Party member, personal identification in that way.

ADDITIONAL EXCERPTS FROM ORIGINAL HEARING

2226

Benjamin Gitlow
Direct Testimony

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Q. I would like to hand you this document, Mr. Gitlow, and ask you to state what it is, if you know.

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2227 The Witness: This is a copy of the documents and minutes which I submitted to the F.B.I., together with my interpretation.

By Mr. Paisley:

Q. Does that last paragraph on the last page——

Mr. Abt: Just a moment. This is most irregular, Mr. Chairman. The Attorney for the Government hands this man a document. We do not know what the document is. Now it appears that it is some kind of a memorandum that he wrote, we don't know when. We haven't seen the document. And he says it is his interpretation from documents that he has handed to the F.B.I.

Mr. LaFollette: That is all he has answered so far, isn't it? It hasn't been offered.

Mr. Abt. If this document is given to the witness as I take it it is, Mr. Chairman, for the purpose of refreshing his recollection, first we are entitled to know whether the Witness' recollection has been exhausted, and second, we are entitled to have the foundation laid for the document from which he is refreshing his recollection.

We have had none of that.

Mr. Paisley: If Counsel could just contain himself
2228 for just a moment, he could have the document. The question I asked of the witness was, whether or not the last paragraph refreshed his recollection. If he had said yes, then I was going to tender it to Counsel for his examination, if he wanted it.

2229 Mr. LaFollette: In other words, we are confronted again with a non-responsive answer to your question.

Mr. Paisley: Yes sir. I don't know whether it was non-responsive or not. I asked the witness first what it was, and second, did it refresh his recollection.

Mr. LaFollette: Does it refresh your recollection?

The Witness: Well, if I recall the question, and the answers I gave, he asked me whether this matter was discussed in Moscow when I was there, whether I heard any discussion, and I said "no."

Mr. LaFollette: That is right. Now let me ask you just about this document. Does that refresh your memory, Mr. Gitlow, now that you have looked at it?

The Witness: This doesn't refresh my memory any more to conversations concerning this matter in Moscow. Not at all.

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Mr. LaFollette: And what did you say this was? You say you recognized it?

The Witness: This here is a copy of my interpretation of the minutes and documents which I submitted to
2230 the Federal Bureau of Investigation.

Mr. LaFollette: And when was that made?

The Witness: That was made when I turned the documents over to them, right after I turned the documents over to them.

Mr. Abt: Mr. Chairman.

Mr. LaFollette: Mr. Abt.

Mr. Abt: This entire matter for this purpose is a complete tempest in a teapot because the witness's recollection, I take it, has not been refreshed.

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2753

Cross-Examination

Q. Then, while the documents were in the possession of the FBI, did you have occasion to confer about these documents with anybody in the FBI? A. No, I did not confer on these documents with the FBI after I turned them over to the FBI.

The only thing I did was, after the documents were turned over to the FBI, I sat down and went over each document and dictated an interpretation of each document, which I turned over to the FBI.

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2765 Q. Mr. Witness, two questions on the last subject about which I was making inquiry:

First, did you make any other memoranda with respect to the documents which you turned over to the F.B.I., other than the memoranda that you described this morning? A. I did not.

Q. Did you make any oral statements to the F.B.I., or to any representative of the Department of Justice, about which a written memorandum was made by them—that you know of? A. Nothing that I know of.

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Mr. Abt: Our motion is that the Panel, either by its order or by subpoena, direct the Petitioner to produce for the inspection of the respondent the following documents:

2766 First, all of the documents which this witness says he turned over to the Federal Bureau of Investigation.

Second, the memorandum, so-called explanatory memorandum, which this witness testified that he prepared and turned over to the Federal Bureau of Investigation,

Third, any other memorandum, either written by this witness or transcribed by the F.B.I. from an oral statement made by him, in the possession of the F.B.I.

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2771 Mr. Paisley: Do you want to hear from us, Mr. Chairman?

Mr. LaFollette: I would like to hear from you.

Mr. Paisley: In the first place, by way of a preface, I might say that I don't feel there is any substance whatsoever to the comments counsel has made upon the testimony of the witness, so I will pass that.

Now, he has cited no cases. The reason he cited no cases is because he has no law to back him up.

The files of the Department of Justice are confidential. There are many cases, as you know, where production has been sought and where production of the files of the executive departments was sought, and they have not been

2772 produced. He hasn't cited any case, because none would sustain his contention.

Now as to these three classes of documents he wants, there is no question whatsoever that he is not entitled to the first category and the third category.

Now, as to this second category, the so-called explanations which the witness says he dictated over a period of three or four weeks, in the offices of the F.B.I., about these various documents, he did testify that some of those he used when we went over the exhibits in preparation for this hearing.

All the cases that I have read on the subject of requiring the Government to produce documents from its files, from its confidential files, where the courts have held that op-

posing counsel was entitled to the documents, are cases where the witness has used the documents on the stand, for refreshing his memory.

Now, we attempted to refresh the recollection of the witness with two of those so-called explanations. We voluntarily turned them over to counsel because we realized he was entitled to have them. He is not entitled to have the others.

We resist the motion. He has furnished no grounds whatsoever for the granting of the motion and that is about all I have to say. If he wants to get into a legal argument, we can supply a brief to the Board on the subject. But
2773 we ought not to be placed in that defensive position when they have come forward affirmatively with nothing.

. . . . . .

2886 Mr. LaFollette: Please come to order.

. . . . . .

The motion made by the respondent on May 10, that the panel, either by order or subpoena, direct the Petitioner to produce for the inspection of the respondent the documents described in that motion, is denied.

. . . . . .

2893 Q. Mr. Witness, with respect to the exhibits that have been introduced here, through you, did you make a memorandum with respect to these exhibits? A. I made a memorandum at the time they were—right after they were turned over to the F.B.I.

Q. You made a memorandum with respect to the so-called minutes of the various meetings that have been introduced here as evidence? A. I did.

Mr. Marcantonio: Mr. Chairman, I now ask that a subpoena be made available to the respondent.

By Mr. Marcantonio:

Q. One more question: Are those memoranda now in the possession of the Federal Bureau of Investigation, as far as you know? A. As far as I know, they are.

Q. You made the memoranda in the office of the Federal Bureau of Investigation? A. In New York.

Q. In New York, New York. And you left the memoranda with the Bureau? A. I dictated them, and I suppose they typed them there.

2894 Mr. LaFollette: After this further cross examination, so that the record may be clear, do you wish to renew your motion?

Mr. Marcantonio: Not in the same form. I now ask for a subpoena. We want subpoenas at our disposal. I now make a formal request for subpoenas so that the respondent may serve those subpoenas on the Attorney General.

Mr. LaFollette: The ruling of the Panel is that the request is now, at this time, denied.

Mr. Marcantonio: When the Panel said "at this time"—

Mr. LaFollette: Well I mean, now denied. If there is any qualification in that, it is out. It is denied.

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2895 Mr. LaFollette: I understand what you want.

Let me say this: You are entitled to the possession of subpoenas. You are entitled to submit them, either in open hearing, or to any member of the Panel for signature, so that they may be issued.

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2896 Mr. Marcantonio: Now, we would like to have those subpoenas, Mr. Chairman, some time during the recess, so that that may be done today before this witness leaves the stand.

Mr. LaFollette: The Clerk will furnish them to counsel now.

Mr. Marcantonio: During the recess.

Mr. LaFollette: All right, you may have them during the recess, Mr. Marcantonio. There is no disposition, certainly on our part—I know on mine—to deny you the opportunity to make your record as clear as possible on the issues on which you wish to make it.

Mr. Marcantonio: Very well.

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6310

Nathaniel Honig

Cross-Examination

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Q. Were you the same Nathan Honig who testified before the Canwell Committee of the State of Washington on January 30, 1948? A. Yes, I don't remember the exact date, but I did so testify.

Q. But you do recall testifying before that committee? A. I do, yes.

Q. Do you recall it was in the year 1948? A. I am pretty sure it was, yes.

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Q. I now refer to page 212 of the Canwell Committee testimony. Do you remember giving this testimony? You were asked this question:

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6311 Q. Do you recall making this answer:

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6312 Q. Did you give that answer, Mr. Witness? A. That is substantially correct. The language is not mine throughout that proceeding, throughout the published proceedings. The language is changed a lot, but I did say those facts.

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6313 A. No. No, I did not, and as I said before, the transcript of that proceeding was very badly botched and I protested to the Canwell Committee about

that and about a lot of other things in there. I did not answer that way.

Q. Did you protest to the Canwell Committee about this answer? A. I protested about the entire thing.

Q. Did you protest about this particular answer that I have just read to you? A. I don't recall whether I specifically mentioned that, but I wrote a letter of protest to the committee on the entire transcript as soon as I received the transcript.

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6315 Mr. Marcantonio: Mr. Chairman, we would like to have a subpoena for the official reporter, duces tecum, to have the official notes.

Mr. Lafollette: You may have it. Understand, I am not going to let you put it on and hold up this cross-examination and put it on at this time, but you may have it subsequently.

Mr. Marcantonio: Yes. I merely asked for the subpoena.

Mr. Lafollette: Yes, you may have the subpoena.

Mr. Marcantonio: I merely want to point out, Mr. Chairman, that the volume of this testimony contains a list of the staff of the committee that made the investigation, including the clerical staff, including three official stenographers who took down the minutes, and we will want to subpoena such of those three stenographers who took those particular notes, with their notes.

Mr. LaFollette: You may have it.

6316 By Mr. Marcantonio:

Q. Do you have a copy of the letter you sent to this committee? A. No, I made no copy.

Q. Did you deliver the letter personally or did you mail it? A. I mailed.

Q. Did you receive an answer? A. I never received an answer.

* * * * * * * * * * *

6318 A. I don't recall whether I referred specifically to that particular incident. I wrote the letter and I said that the transcript of my testimony was full of inaccuracies, full of grammatical errors to the extent, I believe I said—well, that is about what I said. I don't remember what specific instance. I did mention specific cases, but I don't remember what they were now.

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6370 Q. Mr. Witness, do you recall testifying on this subject in the matter of Bridges' deportation proceedings? A. Yes, I did.

Q. I am now reading from page 2215 of the Bridges versus Wixon case. Were you asked this question:

"Question: Do you remember testifying as a witness in a case entitled Chatham Shoe Company v. the Shoe Workers Industrial Union?"

And did you give this answer:

"Yes, I testified in a—I don't remember the name of the case, but it was a shoe case."

Do you recall being asked that question and making that answer? A. Yes, I do.

Q. Do you recall being asked this question:

"Do you remember that the trial took place before Mr. Justice Edward J. McGoldrick?"

And you said:

6371 "I don't remember the——"

And then the Inspector said, "McGoldrick," and spelled the word M-c-G-o-l-d-r-i-c-k." Do you recall that? A. I recall it. I don't remember the name, but I recall substantially that.

Q. Then were you asked this question and did you make this answer?

"Question: That took place in October 1933, didn't it?

"Answer: I think it did; I am not sure of the date."

Do you recall that question and that answer? A. I believe I do, yes.

Q. Then you were asked this question, were you not?

"Question: Isn't it true that in that case you appeared as a witness and you testified under oath in substance, that beginning with July 1, 1933, or approximately at that time, the Trade Union Unity League had discontinued and severed its affiliation with the Red International of Labor Unions?"

Do you recall being asked that question? A. Yes, except I don't recall the exact date you mentioned, but I am willing to accept that that is what I said.

Q. Then there was discussion between counsel
6372 and the Presiding Inspector, and then the Presiding Inspector said, "He asked whether you did testify as he has suggested."

Do you recall giving this answer?

"No, I did not testify in those words."

Do you recall saying that? A. No, but I would grant that I said it.

Q. Then were you asked this question and did you make these answers:

"Question: Did you testify to that in substance and effect?

"Answer: No; not in that substance and effect."

Do you recall giving that answer to that question? A. Not exactly, but I will grant that I might have said that, yes.

Q. Were you asked this question?

"You are sure of that?"

And your answer:

"Yes. I remember distinctly what I testified when I was sent there to testify."

Do you recall that question and that answer? A. I don't, but I don't deny it.

Q. You don't deny it. A. I have no reason to deny it. I just don't recall the exact wording.

Q. Do you admit making that answer to that
6373 question, Mr. Witness? A. Oh, I think so, yes.

Q. Continuing then on page 2219—in between

there was discussion between counsel and the presiding officer and then on page 2219 were you asked this question:

"Question: I will ask you now in the case that we have been talking about, the Chatham Shoe case in 1933, you did testify on the question of disaffiliation of the Trade Union Unity League from the Red International of Labor Unions?"

Then there was an objection. Then there was more colloquy. Then did you give this answer?

"Answer: I testified as to the relationship of the TUUL with the RILU. Yes, the question of disaffiliation or not disaffiliation would be part of what I testified about."

Do you recall giving that answer? A. I think I do, yes.

Q. Now continuing, page 2220, were you asked this question?

"Question: What in substance was your testimony on the question of disaffiliation?"

Do you recall being asked that question? A. Yes, I do.

Q. Do you recall making this answer?

6374 "Answer: I testified to the effect—I can't give exact words of course—to the effect, in substance, that the current literature of the Trade Union Unity League, literature then in use, did not show affiliation of the TUUL with the Red International Labor Unions. That was the substance, to the best of my recollection."

Do you recall giving that answer? A. I think I do, yes.

Q. After more discussion between counsel and the Presiding Officer, were you asked this question?

"Question: Mr. Honig, in the testimony that you gave on the question of disaffiliation"——

There was an interruption and more discussion, and then the question continued:

"—did you intend to give the impression that disaffiliation had occurred?"

Then there was an objection, a statement by the Presiding Officer, and then did you give this answer to the question:

"Did you intend to give the impression that disaffiliation had occurred?"

Mr. Witness, did you or did you not give the following answer:

"No, I merely intended to show as a factual—as a matter of fact, that the literature, the current
6375 literature of the Trade Union Unity League did not refer to any such affiliation. That is, most of the literature then being used. At the same time I was shown literature that still was in circulation in the Trade Union Unity League relating to the program—this is to the best of my memory, it is quite a long time ago. I was shown literature, I believe, by the court which still did refer to such affiliation with the RILU and I was asked if I could identify that as having been published by the TUUL or the Labor Unions, as the case may be, and I did so identify it. But I pointed out that this was not the literature, the latest literature showing the program, policy and so forth."

Did you give that answer, Mr. Witness? A. I believe I did, but is that all the answer?

Q. Did you give that answer? A. I believe I did, yes.

Q. We will come to some more. A. Sure.

Q. You believe you gave that answer? A. I believe I did. If you read it there, I believe I did.

Q. Now, were you asked this question? Do you remember this question, the same page:

"Is it correct, then, that you drew a distinc-
6376 tion in your testimony between the literature of the Trade Union Unity League prior to a certain period in which there was mention of a connection or affiliation, on the one hand, and literature after that certain period in which there was no mention of any such affiliation?"

Do you recall being asked that question? A. I think so, yes.

Q. Now, Mr. Witness, did you make this answer to that question?

"Answer: No, not that kind of a distinction. The distinction was trying, at least in my way, to draw there, was a distinction of date of publication of literature. I was just simply trying to show that this literature was published later than that literature and that, therefore, this was more current."

Did you make that answer? A. I think so. Probably, yes.

Q. Mr. Witness, I have been reading first on page 2215 and then from there I went to 2216, over to 2220, 2221, and 2222. I will ask you to look at what I have read to you, Mr. Witness, and I will ask you if any of those words that I read are inaccurate, represent any distortion of your testimony, or whether or not that is a correct transcript of the testimony that you gave in the case of Wixon versus Bridges.

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6377 Q. The question that I believe was pending was, does any of the testimony which I have read, Mr. Witness, and which you have now examined, represent any inaccuracy in the testimony that you gave before that committee? A. Could I explain my answer when I do give it?

Q. I am asking you very simply, does the testimony that you gave there, the printed testimony, the printed words, that I have shown you there, represent any inaccuracy in the transcript of the testimony that you gave?

Mr. Story: Mr Chairman——

6378 Mr. LaFollette: I will let him answer.

Mr. Story: I think, Mr. Marcantonio should go back to his complete answer which starts on page 2213 and carry it all the way through.

Mr. LaFollette: I thought Mr. Marcantonio read the complete question and answer.

Mr. Marcantonio: I read everything that is pertinent, and I am certain that the Panel will agree with me when they examine that testimony. The question I am asking him now is a very simple question, because this witness has challenged the accuracy of one transcript this morning.

Mr. Story: With that part of his answer taken out of context, Mr. Chairman, the witness can not answer. Let us get his entire answer to that question starting on page 2213 and carrying it through or as far as Mr. Marcantonio would like to carry it, and then we have no objection.

* * * * * * * * * *

Q. Do you challenge the accuracy of that transcript? A. I don't challenge the accuracy of the transcript, no, but I challenge—I simply state that you asked me about a partial answer I gave. You took it out of the context of my testimony here, and it simply is meaningless without the entire thing.

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6379 Mr. Story: Mr. Chairman, that is still not fair. We have so much colloquy in this testimony here where there is no continuity in his answer unless you get his complete testimony on this particular point, and we object for that reason.

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6380 Mr. Marcantonio: So there will be no argument about it. You want us to read on page 2213, Mr. Story, is that correct?

Mr. Story: Yes.

By Mr. Marcantonio:

Q. "Question: All right. During that period of time did disaffiliation occur between the Trade Union Unity League and the Red International of Labor Unions?"

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6381 Were you asked that question, Mr. Witness? A. Yes.

Q. Then there is a statement by the Presiding Inspector who said: "I didn't get the word."

Mr. Gladstein, the attorney, said: "Disaffiliation." And then did you give the following answer, Mr. Witness?

"No formal disaffiliation occurred. It was decided, I believe, perhaps six months or eight months before I sailed for the Soviet Union, that we would drop from, for instance, the masthead of Labor Unity, it might have been before that, but some time much later after I became editor of Labor Unity anyway, we would drop the line in the masthead of Labor Unity 'affiliated with the Red International of Labor Unions' and that in any future pamphlets or publications gotten out by the Trade Union Unity League or sponsored by the Labor Unity, that any mention of that affiliation would be dropped; not denying it, but simply dropping any reference to it."

Did you give that answer? A. Yes.

Q. Then you were asked this question:

"Then is that the only thing that happened that would indicate disaffiliation or an effort at it?"

Then there was a statement by Government Counsel. I will read it:

6382 "Mr. Del Guercio: That isn't what the witness said would indicate disaffiliation."

Then defendant's lawyer, Mr. Gladstein, said:

"I am asking him whether there is anything else that took place to indicate disaffiliation."

Then the Presiding Inspector said:

"His interpretation isn't of course material. I think the witness understands what is asked."

Then did you give this answer?

"Answer: There wasn't anything that actually occurred to indicate disaffiliation, because I remember the

meeting of the —or, it was taken up at several meetings of the national executive board of the TUUL, where it was distinctly stressed they were still to be affiliated with the Red International of Trade Unions and would continue to send representatives to the Red International of Trade Unions, but we were to simply drop reference to that in connection in any publications."

Did you give that answer? A. Yes.

Q. Then were you asked:

"Well, then, your testimony would be that there was no disaffiliation."

And you gave this answer, did you not?

"My testimony is that there was no disaffiliation
6383 while I was editor of Labor Unity."

Wasn't that your answer? A. Say that again.

Q. "Answer: My testimony is that there was no disaffiliation while I was editor of Labor Unity."

A. Yes. Go on.

Q. Did you make that answer? A. I believe I did.

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6385 Q. Now, what question do you want me to ask you again that I read to you?

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The Witness: The question was, "did you intend to give the impression that disaffiliation had occurred?" and my answer here was "no, I merely intended to show as
6386 a factual—as a matter of fact that the literature, the current literature of the Trade Union League did not refer to any such affiliation."

But my answer was contingent on the whole thing and what I meant to say—the accentuation of that word "no" as Mr. Marcantonio gave it would mean on my part a complete denial. What I was trying to show there was what I was trying to show today in connection with what I have

already said: Not merely was I trying to give the impression that disaffiliation had occurred but also that I was using this literature at the hearing in an attempt to show that to the court.

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6388 Q. Now, Mr. Witness, when you testified here that your testimony in the Shoe Workers case was a lie—Do you still say you were lying then? A. I was lying, you mean, in the Shoe Workers case?

Q. Yes. A. Yes, I was lying when I testified in that Shoe Workers case.

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6446 Q. At page 212, Canwell: Do you recall being asked this question, reading from page 212 of the Canwell testimony:

> "Question: Now, before you went to Russia did you know that the Communist Party from time—the Communist International—from time to time sent money into this country to finance activities in this country?"

Do you recall now being asked that question? A. I think I do, yes.

Q. Do you recall the answer that you gave there? A. No, I don't.

Q. Do you recall whether or not in the letter that you sent, that you say you sent to the Canwell committee as to whether you pointed out any inaccuracies as to the answer to that question? A. I don't recall whether I did on that particular score.

Q. Do you recall making this answer?

> "Answer: I knew that because when I was editor of Labor Unity I met regularly with the National Executive Committee of the Trade Union Unity League, and I knew also that very often what
> 6447 little pay I got as editor depended on whether

that money had arrived, but I was pretty close to Jack Stachel, Bill Foster, William Z. Foster, who was head of the Trade Union Unity League, and they were members of the Political Bureau of the Party and they kept me in their confidence and they would tell me they were expecting some money through Allen or through Wagner and so forth. I didn't have to have a diagram drawn for me."

Do you recall giving that answer? A. Now that you read it, I do.

Q. You recall it now, don't you? A. Yes.

Q. Did you give any other answer in connection with subsidies as to how you knew? A. To Houston? To the Canwell Committee?

Q. Yes. A. I don't remember whether I did.

Q. That answer was the whole answer you gave with respect to subsidy, isn't that right? A. I don't remember whether I gave any additional answer. I don't remember my testimony exactly.

Q. That is the only answer you gave to that question, isn't that right? I will show it to you (placing book before the witness). It is at the bottom of page 212. A. I believe that probably was the only answer. I see
6448 no other.

Q. Is Weiner's name in that answer? A. I didn't hear you.

Q. Did you mention Weiner's name in that answer that you gave, William Weiner, the name of William Weiner? A. I apparently didn't.

Q. Did you mention a conversation that you said you had with Kutnik? A. No, I didn't, apparently.

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6488 Redirect Examination

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Q. Mr. Honig, you have testified on cross-examination that you wrote a letter to the Canwell Committee of Washington State, the Un-American Activities Committee in Washington State, protesting the errors and the incorrect reporting of your testimony in that proceeding, is that correct? A. Yes.

6489 Q. Do you recall approximately how long after you testified you wrote this letter? A. On receipt of a copy of the testimony from the Canwell Committee, which I am pretty sure was within six months after I testified.

Mr. Marcantonio: Six months after he testified?

The Witness: Within six months after I testified.

May I elaborate briefly on that. What I mean to say is that I didn't receive a copy of my testimony, a copy of this book which contained my testimony, until about six months, within six months, some time within six months after I testified, and within a day or two after I had received it I wrote the letter.

By Mr. Story:

Q. Is that the same book that Mr. Marcantonio has shown you from time to time? A. Yes. That is the first volume of the proceedings of the Canwell Committee.

7816

Mary Stalcup Markward

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Cross-Examination

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Q. You testified in this proceeding, and I am now reading your testimony, and ask you if you were

7817 asked this question and did you make this answer, at page 5890:

"Question: Will you tell us what transpired at that meeting?

"Answer: The chief topic of discussion at that meeting was the question of the statement which had been made to Thorez, one of the French Party leaders, that the Communist Party members of France would not bear arms against the Soviet Union. This was the essence of what the statement was. The Communist Party leaders around the world had made similar statements. Eugene Dennis, I believe, in the name of the Communist Party of the United States had issued a similar statement. I believe William Foster joined with him in this statement, if I am not mistaken. Phil Frankfeld had made a statement to the Baltimore Sun along the same line, stating that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union."

Do you recall giving that testimony here? A. Yes.

Q. You say that you read the exhibit which I now show you, Exhibit 331, "United States Communists will oppose Wall Street War, says Foster and Dennis"? A. Yes.

Q. You also stated that you read the article 7818 that appears in Exhibit 332, being the Daily Worker, Sunday, March 13, 1949, bearing the title "Frankfeld Answers Sun Paper." A. Yes.

Q. Just keep these before you while I ask you the following questions.

Having read that, referring now to Exhibit 331, will you tell us where Mr. Foster or Mr. Dennis states that they would not bear arms against the Soviet Union in any war between the United States and the Soviet Union? A. I answered the question about what the discussion was in the meeting, not what the statements say. The same speaks for itself.

Q. I know, but you said this statement was read at the meeting, and it was the subject of the discussion.

I now ask you where in this statement you find that either Mr. Foster or Mr. Dennis said that they would not bear arms in any war between the Soviet Union and our own country. A. I do not see that in this statement.

Q. I beg your pardon? A. Those words in that form are not in this statement.

Q. Coming back to your testimony, page 5890, in the light of your statement to the question previous to the last one that I asked you, you made this statement, did you not? "The Communist Party leaders around the world have made similar statements." Do you
7819 recall giving that testimony here? A. I do.

Q. You also said in that testimony at page 5890, "Eugene Dennis, I believe, in the name of the Communist Party of the United States, had issued a similar statement." Do you recall saying that here? A. Yes, sir.

Q. Coming to Exhibit 332, I come back to your testimony in connection with that exhibit, page 5890, you said, did you not, "Phil Frankfeld had made a statement to the Baltimore Sun along the same line, stating that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union." Wasn't that your testimony? A. Yes, sir. I think the statement in these things where they say they will oppose such a war, called it an unjust war, and they also said they would not take part in such a war.

Q. We are talking about bearing arms. You said here in your testimony, and I am asking you again the question I asked you before, did you or did you not testify as follows, reading from page 5890 of the transcript of this proceeding which contains your testimony:

"Phil Frankfeld had made a statement to the Baltimore Sun along the same line, stating that the members of the Communist Party would not bear arms in any conflict between the United States and the
7820 Soviet Union." That was your testimony here, was it not? A. That is right.

Q. Now I direct your attention to Exhibit 332, "Frankfeld Answers Sunpaper." Will you show us where Mr. Frankfeld states there that the members of the Communist Party will not bear arms in any conflict between the United States and the Soviet Union? A. It does not state that in this paper. He stated that at the meeting which we held on this date.

Q. You stated here on page 5890 that Phil Frankfeld had made a statement to the Press, to the Baltimore Sun, specifically, along the same line, that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union. Now you say he did not make that statement or that he did make the statement to the Baltimore Sun; which is it? A. He made the statement in the meeting in which we were discussing the statement he had made to the Baltimore Sun, and my recollection very evidently has confused the actual statement he made to the Sun and the discussion of the statement he made to the Sun.

Q. So your recollection was confused on the subject, was it not? A. It was confused on the actual wording of what he said to the Sun.

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7821 Q. As a matter of fact, calling your attention to Exhibit 332, I call your attention to the following language:

> "Striking out against the misrepresentations of what form opposition to war would take, he declared"—

This is Mr. Frankfeld's statement.

> "—if you mean strikes and sabotage and all that marlarke, the answer is definitely no, we would mobilize the American people ideologically and politically against the war."

Isn't that the statement before you? A. Yes.

Q. Did you make a report in writing to the FBI with respect to what Mr. Frankfeld had declared on this issue of possible conflict between the Soviet Union and the United States? A. I made a report at that time of exactly what transpired at that meeting.

Q. And the report was in writing? A. That is correct.

Q. Did your report conflict with the report that appears in the news story and the statement of Frankfeld
7822 in Exhibit 332? A. The FBI had a copy of the Sunpaper, what the Sunpaper had to say. I assume they also had a copy of this Daily Worker. I reported the discussion which took place at this meeting, which did contain the essence of what I had to say about not participating in a war with the Soviet Union.

Q. Do you have a copy of that report with you ? A. I do not.

Q. Do you have it at home? A. I do not.

Q. Do you have a copy of it anywhere? A. I do not.

Mr. Abt: If the Panel please, on the basis of this witness' testimony, we now move that the Government be ordered to produce a copy of the report to the FBI which this witness says that she made, in as much as there is a clear conflict between her testimony on direct examination and what she alleges the content of that report is, as well as the exhibits themselves.

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7836 Mr. LaFollette: No. We may proceed. The motion is denied, and the exception is granted.

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13967

Louis Francis Budenz

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Cross-Examination

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Q. Yes. How soon after October 10, 1945, which was the date you say you left the Communist Party, did

you obtain a position teaching at the Notre Dame University? A. How long after I left the Party did I obtain the position?

13968 Q. That is right. You say you left the Party on October 10, 1945. Is that right? A. Yes, sir.

Q. How long after that did you obtain the position teaching? A. I was there on the 12th.

Q. You were there on the 12th? A. 12th of October.

Q. Two days afterward. A. That is correct.

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13988 Q. After you left the Communist Party you had a period of silence for a period of a year, did you not? A. That is right, I did, yes, sir.

Q. That is, a year in which you made no public appearance? A. That was an agreement with the Univer-
13989 sity of Notre Dame.

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13990 Q. During this period of silence, however, you did have discussions with the FBI, did you not, during that year? A. One discussion, which lasted for three days. I did not wish to see them, by the way, but I finally agreed to do so.

Q. Yes. In this discussion you gave the FBI infor-
13991 mation about the Communist Party, did you not? A. Yes, sir, some information.

Q. How soon after you left the Communist Party did you start giving information to the FBI? A. I should say approximately three, about six months is my recollection. It may have been a little earlier, four to six months.

Q. The first three days that you were at Notre Dame did you give any information to the FBI at that time? A. No, sir. I didn't see any FBI representative until after several months at Notre Dame.

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14001 Q. So as to clarify the record, you said this
14002 morning that you spent three days with the FBI, and

that was four to six months after coming to Notre Dame. A. That was my remembrance, yes, sir. That was the first meeting.

Q. Yes. How soon after that did you have another meeting? A. I had, I think, one more meeting very shortly thereafter.

Q. You say shortly thereafter. Would you say a week thereafter or two? A. I would say several weeks probably.

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Q. Prior to November 22, 1946, how much time did you spend with the FBI? A. I can't say that exactly, but I should say there were visits in New York in 1946. I should say 100 hours or more.

Q. One hundred hours or more. These 100 hours were broken up into quite a number of interviews and 14003 visits? A. It may have been even more than that.

Q. Can you give us approximately how many interviews and visits this constituted? A. There were a number of days on these first two visits that ran over several days, and then there were intermittent connections with the FBI. Then in the fall I had a number of visits from the FBI.

Q. During these visits, all of these numerous visits that took place prior to November 22, 1946, which was the date of your first public appearance, did you give any written reports to the FBI? A. No, sir.

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14076 Mr. Abt:

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14078 On that state of the record we submit, if the Panel please, that we are entitled to all reports made to the FBI by this witness dealing with any and all conversations between himself, Weiner and Childs with reference to the financing of the Midwest Daily Record.

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For the reasons that I have stated therefore we move for the production of those reports.

14081 Mr. Brown: The motion is denied.